रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 39] नई दिल्ली, सितम्बर 24—सितम्बर 30, 2023, शनिवार/ आश्विन 2—आश्विन 8, 1945
No. 39] NEW DELHI, SEPTEMBER 24—SEPTEMBER 30, 2023, SATURDAY/ASVINA 2—ASVINA 8, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 18 सितम्बर, 2023

का.आ. 1556.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ बड़ौदा के कार्यपालक निदेशक श्री अजय के. खुराना (जन्म तिथिः 17.3.1964) की वर्तमान अधिसूचित कार्यावधि, जो दिनांक 19.9.2023 को समाप्त हो रही है, को उनकी अधिवर्षिता की तारीख अर्थात 31.3.2024 तक अथवा अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

[ई फा.सं. 4/2(i)/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 18th September, 2023

S.O. 1556.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby extends the term of office of Shri Ajay K. Khurana (DoB: 17.3.1964), Executive Director, Bank of Baroda beyond his currently notified term which expires on 19.9.2023, till the date of his superannuation, *i.e.*, 31.3.2024, or until further orders, whichever is earlier.

[eF. No. 4/2(i)/2023-BO.-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2023

का.आ. 1557.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ इंडिया के कार्यपालक निदेशक श्री पी. आर. राजगोपाल (जन्म तिथिः 14.7.1967) की वर्तमान अधिसूचित कार्यावधि, जो दिनांक 29.2.2024 को समाप्त हो रही है, को दो वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

[ई फा.सं. 4/2(ii)/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 18th September, 2023

S.O. 1557.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby extends the term of office of Shri P. R. Rajagopal (DoB: 14.7.1967), Executive Director, Bank of India beyond his currently notified term which expires on 29.2.2024, for a period of two years, or until further orders, whichever is earlier.

[eF. No. 4/2(ii)/2023-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2023

का.आ. 1558.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ इंडिया के कार्यपालक निदेशक श्री एम. कार्तिकेयन (जन्म तिथिः 17.3.1965) की वर्तमान अधिसूचित कार्यावधि, जो दिनांक 9.3.2024 को समाप्त हो रही है, को उनकी अधिवर्षिता की तारीख अर्थात 31.3.2025 तक अथवा अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

[ई फा.सं. 4/2(iii)/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 18th September, 2023

S.O. 1558.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby extends the term of office of Shri M. Karthikeyan (DoB: 17.3.1965), Executive Director, Bank of India beyond his currently notified term which expires on 9.3.2024, till the date of his superannuation, *i.e.*, 31.3.2025, or until further orders, whichever is earlier.

[eF. No. 4/2(iii)/2023-BO.-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2023

का.आ. 1559.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सेन्ट्रल बैंक आफ इंडिया के कार्यपालक निदेशक श्री विवेक वाही (जन्म तिथिः 15.9.1965) की वर्तमान अधिसूचित कार्यावधि, जो दिनांक 9.3.2024 को समाप्त हो रही है, को उनकी अधिवर्षिता की तारीख अर्थात 30.9.2025 तक अथवा अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

[ई फा.सं. 4/2(iv)/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 18th September, 2023

S.O. 1559.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby extends the term of office of Shri Vivek Wahi (DoB: 15.9.1965), Executive Director, Central Bank of India beyond his currently notified term which expires on 9.3.2024, till the date of his superannuation, *i.e.*, 30.9.2025, or until further orders, whichever is earlier.

[eF. No. 4/2(iv)/2023-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 18 सितम्बर, 2023

का.आ. 1560.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यूनियन बैंक आफ इंडिया के कार्यपालक निदेशक श्री नितेश रंजन (जन्म तिथिः 11.11.1976) की वर्तमान अधिसूचित कार्यावधि, जो दिनांक 9.3.2024 को समाप्त हो रही है, को दो वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

[ई फा.सं. 4/2(v)/2023-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 18th September, 2023

S.O. 1560.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby extends term of office of Shri Nitesh Ranjan (DoB: 11.11.1976), Executive Director, Union Bank of India beyond his currently notified term which expires on 9.3.2024, for a period of two years, or until further orders, whichever is earlier.

[eF. no. 4/2(v)/2023-BO.-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1561.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा (6) की उप-धारा (1) के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्रीमती कविता पद्मनाभन, आयुक्त एवं सचिव, असम सरकार के स्थान पर श्री पंकज, विशेष सचिव, हरियाणा सरकार, वित्त विभाग को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, राष्ट्रीय आवास बैंक के निदेशक मंडल में निदेशक के पद पर नियुक्त करती है।

[फा.सं. 24/17/2010-आईएफ.II]

अनिल कुमार, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1561.—In exercise of the powers conferred by clause (f) of sub-section (1) of section 6 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby appoints Shri Pankaj, Special Secretary to Government, Haryana, Finance Department as Director on the Board of Directors of National Housing Bank, *vice* Smt. Kavitha Padmanabhan, Commissioner & Secretary, Government of Assam, for a period of 3 years from the date of notification or until further orders, whichever is earlier.

[F. No. 24/17/2010-IF.II]

ANIL KUMAR, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 4 सितम्बर, 2023

का.आ. 1562.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में प्रसार भारती, आकाशवाणी महानिदेशालय के अधीनस्थ कार्यालय यथा आकाशवाणी केंद्र, देहरादून, जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/10/2017-हिंदी]

इफ्तेखार अहमद, उप निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 4th September, 2023

S.O. 1562.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the subordinate office of Prasar Bharti, Directorate General, Akashwani namely Akashwani Kendra, Dehradun, whereof more than 80% of the staff have acquired the working knowledge of Hindi.

[F. No. E-11017/10/2017-Hindi]

IFTEKHAR AHMAD, Dy. Director (O.L.)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 19 सितम्बर, 2023

का.आ. 1563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण– सह – श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 22/2008)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **7/09/2023** को प्राप्त हुआ था।

[सं. एल-20012/6/2008-आईआर(सी.एम-I)]

मणिकंदन एन., उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 19th September, 2023

S.O. 1563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No.22/2008*)*** of t**he Central Government Industrial Tribunal-cum-Labour Court NO. 2, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **B.C.C.L.** and their workmen, received by the Central Government on ***7/09/2023.***

[No. L-20012/6/2008-IR(CM-I)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT

Dr.S.K.Thakur,

Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO. 22 OF 2008.

PARTIES : The Working President.,
Janta Mzdoor Union,
Barnwall Bhawan,
Saraidhella,Dhanbad-826001 .
VS
The General Manager,
P.B.Area of M/s BCCL.,
PO: Kusunda,Dhanbad (Jharkhand)
Order No.L-20012/6/08 –IR (CM-I) dt. 12.03.2008

APPEARANCES :

On behalf of the workman/Union : : Mr.Pintu Mandal Ld. Union Rep. .

On behalf of the Management : Mr.Ganesh Prasad Ld.Adv.,

.

State : Jharkhand Industry : Coal
Dated, Dhanbad, the, 24th April, 2023

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/6/08 –IR (CM-I) dt. 12.03.2008 .

SCHEDULE

"Whether the action of the Management of Balihari Colliery of M/s BCCL in not allowing Shri Prayag Bhuia, Line Mazdoor to join his duty in the Company w.e.f. 26.4.2002 is legal and justified? If not, to what relief is the concerned workman entitled ?"

2. The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employeer,i.e., P.B. Area of M/s BCCL ,Dhanbad and its workman /claimant herein under clause (d) of Sub-Section (1) and Sub-Section (2A) of the Section 10 of the Industrial Dispute Act.,1947 vide letter No. L-20012/6/08-IR(CM-I) dated 12.03.2008 to this Tribunal for adjudication .The order deals with the action of the Management of Balihari Colliery of M/s BCCL in not allowing the workman to join duty which he describes illegal to the charge leveled against him.

3. The facts leading to Industrial Dispute as narrated by the claimant in the claim petition is that the concerned workman/Petitioner namely Shri Prayag Bhuia is/was a permanent employee of M/s BCCL designated as Line Mazdoor posted at Balihari Colliery of M/s BCCL .The workman had gone to his native place and fallen in serious illness .Due to this the workman started absenting from office but his family informed the about the illness of the workman before the Colliery Management .But the Management chargesheeted him on account of the misconduct of the workman and constituted an enquiry under an Enquiry officer which in its report held the workman found guilty of not informing the OP/Management about his illness before the Management .Subsequently the OP/Management was ready to allow him to resume duty with stoppage of one annual increment subject to fitness of health.The OP/Management sent the workman to Apex Medical Board. But the medical test could not be conducted due to

lack of certain documents. Then again sent to Central Hospital, Dhanbad but this time also the test could not be conducted. Due to absentism the constitution of Medical Panel was not feasible as stated by the Doctor .Thus, the workman was thrown out of employment on account of non conducting test for no fault of him .He was neither placed under suspension nor dismissed .Thus, the workman cried foul play in the hands of the Management seeking an Award his favour.

4. Being called upon. the OP/Management came out with assertion that the fact of the present dispute of the workman Sri Prayag Bhuia is not maintainable either in law or fact and cannot stand in the eye of law as it suffers from mischievous suppression and non-disclosure of material facts . That the workman had been absenting from duty without information and prior approval from the Competent Authority w.e.f. 26.4.2002. On being chargesheeted the workman replied to it which was found unsatisfactory leading to conducting of domestic enquiry giving full opportunity to defend /represent .In course of enquiry held at length the charges has fully been established without any doubt .So the Disciplinary Authority decided to allow the workman on duty with stoppage of one Annual Increment subject to fitness by the Apex Medical Board .The workman did not attend the Medical Board for medical examination nor did he inform the OP/Management of his non-appearance So he was not allowed to resume the duty as he did not have any existing or legal right to claim for resumption of duty as he resigned from the services of the Company in the year 2010.

5. With serving notices to both of the parties the proceeding was set in motion.The workman failed to file written statement of claim for five years and so the proceeding was closed as non-existent on 13.06.2013.Subsequently the proceeding-was resumed on prayer of claimant side and claimant side filed written statement on 31.07.2013.The O.P./Management side filed WS/Rejoinder of the Management on 05.09.2014 and served upon the workman .The Management also filed copies of documents on 10.12.2014 and served upon the workman.

Subsequently the proceeding continued for adjudication and opportunity provided for hearing and adjudication on several dates till 13.10.2022.But the workman failed to attend or represent since 2014.He neither adduce evidence nor did he submit document in support of his contention .So being situation the OP/ Management was called upon to file written argument. Ld. Advocate appearing for Management submitted that the claimant had resigned from service. That is why the claimant opted to stay away from the proceedings.

6. Thus on totality of the facts of the matter and materials on record it clearly appears that the workman is not interested in adjudication of the case on merits as he neither put his appearance nor has he led any evidence so as to prove his cause against the OP/Management in the light of the same. The merit of the case became collapsed with resignation from service by the workman to be considered the sole ground of his staying away from the proceeding of the matter. Therefore, the Tribunal is left with no choice except to pass a No Claim Award and as such the Award is passed granting no relief to the workman.

Dr. S. K.THAKUR, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2023

का.आ. 1564.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षक, विभाग. पोस्ट ऑटोमेटेड मेल प्रोसेसिंग सेंटर, इंडिया पोस्ट महिपालपुर, नई दिल्ली; मुख्य पोस्ट मास्टर जनरल (दिल्ली सर्कल) मेघदूत भवन, नई दिल्ली; संचार मंत्रालय दूरसंचार विभाग, अशोक रोड, नई दिल्ली,**के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री भानु प्रताप, कामगार, द्वारा - अखिल भारतीय जनरल मजदूर ट्रेड यूनियन, गिरी नगर, कालकाजी, नई दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट(संदर्भ संख्या 73/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.09.2023को प्राप्त हुआ था।

[सं. एल-40011/6/2021-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th September, 2023

S.O. 1564.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2022) of the **Central Government Industrial Tribunal cum Labour Court - I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintendent ,Dept. of Post Automated Mail Processing Centre, India Post Mahipalpur, New Delhi ; The Chief Post Master General (Delhi Circle) Meghdoot Bhawan, New Delhi ; The Ministry of Communication Dept. of Telecommunication , Ashoka Road, New Delhi, and Shri Bhanu Pratap , Worker, though- All India General Mazdoor Trade Union, Giri Nagar, Kalkaji, New Delhi,** which was received along with soft copy of the award by the Central Government on 19.09.2023.

[No. L-40011/6/2021-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

Present : **Justice Vikas Kunvar Srivastava (Retd.)**

(Presiding officer)

CGIT, Delhi-1

ID No.73/2022

Shri Bhanu Pratap S/o Sh.Sukhvendra Singh

Rept. By All India General Mazdoor Trade Union,

170 Bal Mukund Khand,

Giri Nagar, Kalkaji,

New Delhi-110028.

Claimant…

Versus

1. The Superintendent
   Dept. of Post Automated Mail
   Processing Centre,
   India Post Mahipalpur,
   New Delhi.

2. The Chief Post Master General (Delhi Circle)
   Meghdoot Bhawan,
   New Delhi-110001.

3. The Ministry of Communication
   Dept. of Telecommunication
   Sanchar Bhawan, 20,
   Ashoka Road,
   New Delhi-110001.

Management…

None for the claimant

Shri Ritesh Kumar Jha, Dealing Assistant for Dept. of Post.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.40011/6/2021-IR(DU) dated 14.02.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the demand of All India General Trade Union, Delhi vide letter dated 19.10.2020 for reinstatement of Sh.Bhanu Pratap S/o Sh.Sukhvendra on his job to the management of Dept of Post, Automated Mail Processing Centre, India Post, Mahipalpur, New Delhi and payment of his dues is proper, legal and justified? If so, to what relief Sh.Bhanu Pratap is entitled and what directions are necessary in this matter?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

Date: 25.05.2023

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1565.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारत संचार निगम लिमिटेड,** के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT -1/29 of 2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023को प्राप्त हुआ था।

[सं. एल-40011/17/2013-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1565.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/29 of 2013) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bharat Sanchar Nigam Ltd., and The Worker,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-40011/17/2013-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO. CGIT-1/29 of 2013

Parties: Employers in relation to the management of

Bharat Sanchar Nigam Ltd

And

Their workmen

Appearances:

For the first party Management : Absent.

For the second party workmen : Absent.

Dated the 23rd day of August, 2023

AWARD

Parties are found absent when the matter is called.

As per record, today has been fixed for evidence of WW-1. The record further shows since 30.4.2020, the union which has espoused the dispute has not been taking any step or pursuing with the hearing of the reference case. Therefore, a presumption can be drawn the union which has espoused the present dispute is no more interested to proceed with the reference case perhaps it no longer has any dispute over the issue with the management.

Be that as it may, the Central Government, Min. of Labour vide order No.L-40011/17/2013 – IR(DU) dated 27.05.2013, and in exercise of power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act has referred the following issue to this Tribunal for adjudication.

"Whether the action of the management of General Manager, Bharat Sanchar Nigam Ltd., Ahmednagar to discontinue the services of the 13 workmen w.e.f. dates mentioned against their name in the attached list and not allowing them to continue their job is legal and justified? To what relief the workmen are entitled to?"

The record shows the union which has espoused the above dispute has filed its claim statement as well as rejoinder against the written statement filed by the management. Unfortunately, during the time of trial or at the time of adducing evidence to prove the claim as made out in their claim application or in support of the issue under reference it has stopped attending the tribunal, therefore, apart from the pleadings there is no corroborative evidence either oral or documentary in support of the claim made by the union or to substantiate or to adjudicate the issue under reference.

In view of the above, no dispute award is passed.

Accordingly, reference case of CGIT-29 of 2013 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1566.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मुख्य पोस्ट मास्टर जनरल ,**के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार /अखिल भारतीय डाक कर्मचारी संघ,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT -1/13 of 2020) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023को प्राप्त हुआ था।

[सं. एल-40011/16/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1566.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/13 of 2020) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief Post Master General, and The Worker / All India Postal Employees' Union,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-40011/16/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/13 of 2020

Parties: Employers in relation to the management of

The Chief Post Master General

And

Their workmen [All India Postal Employees' Union]

Appearances:

For the first party Management : Mr. B.K. Shukla, Adv.

For the second party workmen : Absent.

Dated the 24th day of August, 2023.

AWARD

Management is present through its Learned counsel.

Today has been fixed for evidence from the side of the union. Unfortunately none appeared from the side of the union when the matter is called.

Record shows that the union has stopped taking any step and appearing before this tribunal since 30.09.2022. Therefore, a presumption can be drawn the union which has espoused the present dispute is no more interested to proceed with the present case.

However, by order No. L-40011/16/2020 (IR(DU)) dated 29.09.2020, the Central Government, Ministry of Labour in exercise of the power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 has referred the following issues to this Tribunal for adjudication.

"Whether the demand of All India Postal Employees Union-Postmen & MTS vide letter dated 27.03.2019 for immediate filing up the vacancies in regard to the post of MTC, Postmen and sorting Assistant in Maharashtra Circle from open Market is 'industrial dispute' under ID Act, 1947 and if yes, whether the demand of All India Postal Employees Union-Postmen & MTC vide letter dated 27.03.2019 for immediate filing up the vacancies in regard to the post of MTC, Postmen and sorting Assistant in Maharashtra Circle from open Market is proper, legal and justified? If yes, what relief is the Union is entitled to and what direction(s), if any, is necessary in the matter ?"

This tribunal is unable to decide the dispute under reference in the absence of any corroborated oral and documentary evidence merely on the basis of un-corroborated pleadings of the parties.

In view of above discussion, no dispute award is hereby passed.

Accordingly, reference case No. CGIT- 13 of 2020 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1567.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मैसर्स अक्ष ऑप्टिफाइबर लिमिटेड,**के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT-1/8 of 2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023को प्राप्त हुआ था।

[सं. एल-42012/107/2015-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1567.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/8 of 2015) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the

employers in relation to **M/s. Aksh Optifibre Ltd., and The Worker,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-42012/107/2015-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/08 of 2015

Parties: Employers in relation to the management of

M/s.Aksh Optifibre Ltd

And

Their workmen

Appearances:

For the first party Management : Absent.

For the second party workmen : Absent.

Dated the 21st day of August, 2023.

AWARD

Neither the management nor the concerned workman are found present when the matter is called.

None appears on behalf of the parties on calls.

The record shows the concerned workman has not been appearing since 04.9.2018. That he has failed to file rejoinder since then. Therefore, a presumption can be drawn the workman who has raised the present dispute is no more interested to proceed with the dispute raised by him.

However, the Central Government, Min. of Labour by order no.L-42012/107/2015 - IR(DU) dated 05/06/2015/11/06/2015, in exercise of its power conferred under section 10(1)(d) and (2A) of the I.D.Act, 1947 referred the following dispute to this Tribunal for adjudication.

(1) "Whether the demand and dispute of the applicant over reinstatement of services on the roll of M/s.Aksh Optifibre Ltd, at Mumbai is legal and justified?

(2) Whether the claim of the applicant for back wages w.e.f.01.11.2013 is legal and justified? If so, to what relief the applicant is entitled to?"

Unfortunately, apart from the claim statement there is neither oral or documentary evidence to substantiate the case and claim of the concerned workman as made out in the claim statement.

The record also shows the alleged employer too is very irregular in conducting the case.

In view of the above, no dispute award is passed. Accordingly, reference case no.CGIT- 8 of 2015 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1568.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मुख्य पोस्ट मास्टर जनरल,** के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक

अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT -1/10 of 2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023को प्राप्त हुआ था।

[सं. एल-40011/03/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1568.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/10 of 2020) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Mahanagar Telephone Nigam Ltd., and The Worker,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-40011/03/2020-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/10 of 2020

Parties: Employers in relation to the management of

Mahanagar Telephone Nigam Ltd

And

Their workmen

Appearances:

For the first party Management : Mr.S.D.Shinde, Adv.

For the second party workmen : Absent.

Dated the 21st day of August, 2023.

AWARD

Management is present.

None appears on behalf of the Union or workmen when the matter is called.

The record shows the union which has espoused the dispute and the three concerned workmen namely, Smt.R.B.Vaity, Smt.D.D.Joshi and Sh. S.J.Tiwari have not been taking any step from the very inception of this case, despite due service of notice of the present reference case upon the General Secretary, Mahanagar Telephone Nigam Kaamgar Sangh on 13.8.2021. Therefore, an inference can be drawn that the union which has espoused the dispute is no longer interested to pursue with the hearing of the present dispute or it has no more grievance against the management over the issue under reference.

Be that as it may, the Central Government, Min. of Labour vide order no. L-40011/3/2020 – IR(DU) in exercise of the power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 has referred the following issue to this Tribunal for adjudication.

"Whether the demand of Mahanagar Telephone Nigam Kamgar Sangh vide letter 24.01.2017 to the management of Mahanagar Telephone Nigam Limited, Navi Mumbai for settlement of pay anomaly arose due to different promotion policy and different pay fixation rules in the case of Smt.R.B.Vaity, Smt. D.D.Joshi and Sh.S.J.Tiwari all Sr. TOA(P) is fair, reasonable, legal and justified? If yes, what relief these workers are entitled to?"

In view of above, no dispute award is passed.

Accordingly, reference case no.CGIT-10 OF 2020 is disposed of.

Justice K.D.BHUTIA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1569.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारतीय पुरातत्व सर्वेक्षण,**के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT -1/09 of 2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023 को प्राप्त हुआ था।

[सं. एल-42011/153/2022-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1569.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/09 of 2022) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Archaeological Survey of India, and The Worker,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-42011/153/2022 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/09 of 2022

Parties: Employers in relation to the management of

Archaeological Survey of India

And

Their Workmen

Appearances:

For the first party Management : Absent.

For the second party workmen : Absent.

Dated the 21st day of August, 2023.

AWARD

Parties are found absent when the matter is called for hearing.

On perusal of the record, it appears notice of this reference was duly served upon the Superintending Archaeologist, Archaeological survey of India, Padmapani Bhavan, Aurangabad as per AD card, while notice sent to the President, Archaeological Survey of India Workers Union, which has espoused the present dispute has returned undelivered with postal endorsement "Refused" on 14.8.2023. It is settled principle of law refusal tantamount to good service.

The Central Government, Ministry of Labour by order no.L-42011/153/2022 – IR (DU) dt.24.05.2022 has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of Archaeological Survey of India, Science Branch, Aurangabad in employing Shri Dhananjay Shastri and 28 others (list attached) as 1/30th status casual labours in Aurangabad caves/ Bibi-ka-Makbara, Aurangabad and continuing as such from their initial engagement to till date as represented by Archaeological Survey of India Workers Union, Aurangabad vide letter dated 06.08.2021, is proper, legal and

justified? If not, to what reliefs including permanency in service are the disputants entitled and what directions are necessary in this respect?"

Non-appearance of the parties despite having knowledge about the present reference case, a presumption can be drawn parties are no more interested to pursue with the dispute. Further, an inference can be drawn that the union which has espoused the dispute no longer has any grievance against the alleged employer over the above issue under reference.

In view of above, no dispute award is passed accordingly and reference case no. 9 of 2022 is disposed of.

Justice KESANG DOMA BHUTIA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2023

का.आ. 1570.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **वरिष्ठ अधीक्षक, मुंबई उत्तर-पश्चिम प्रभाग,,** के प्रबंधतंत्र के संबद्ध नियोजकों और **कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई पंचाट(संदर्भ संख्या CGIT-1/16 of 2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 20.09.2023 को प्राप्त हुआ था।

[सं. एल-40011/17/2017-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2023

S.O. 1570.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -1/16 of 2017) of the **Central Government Industrial Tribunal cum Labour Court – I Mumbai** as shown in the Annexure, in the Industrial dispute between the employers in relation to The **Sr. Superintendent, Mumbai North-West Division, and The Worker,** which was received along with soft copy of the award by the Central Government on 20.09.2023.

[No. L-40011/17/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/16 of 2017

Parties: Employers in relation to the management of

Sr. Superintendent of Post Office (Management North-West Division)

And

Their workmen

Appearances:

For the first party Management : Mr.B.K.Ashok, Adv.

For the second party workmen : Absent.

Dated the 23rd day of August, 2023

AWARD

The management is present through its learned counsel Mr.B.K.Ashok. Unfortunately, none appears from the side of the union which has espoused the present dispute when the matter is called.

The record shows union has stopped attending the Tribunal since 17.12.2021 and has not been taking any step since then. It has failed to file statement of claim till date. Therefore, a presumption can be drawn the union is no more interested to pursue with the dispute raised by it.

Be that as it may, the Central Government, Min. Of Labour by order No. L-40011/17/2017 – IR(DU) in exercise of the power conferred under section 10(1)(d) and (2A) of Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication.

> "Whether the action of Sr. Superintendent, Mumbai North-West Division in extending working hours of MPCM and SB Counters, not granting genuine leave, challenging medical certificates, not sanctioning double duty allowance, forcing staff to prepare fare repots and threatening them of charge-sheet, using parliamentary language deputing staff to another Division without authority allotting delivery of mail to postman on holidays and Sundays use to unsafe building, beat rotation, harass staff / office bearer tantamount to abuse of power and unfair labour practice? If so, what relief the workman of Mumbai North-West Division are entitled to?"

That there is nothing in record to adjudicate the above issue under reference. Therefore, non-appearance of the union, its failure to appear before this Tribunal shows that it has no dispute with the management on the issue under reference.

Accordingly, no dispute award is passed and reference case no. CGIT-16 of 2017 is disposed.

Justice K.D.BHUTIA, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2023

का.आ. 1571.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रत्नाकर बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नंबर 1, कोल्हापुर के पंचाट (7/2014) प्रकाशित करती है।

[सं. एल-12012/74/2014-आईआर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 21st September, 2023

S.O. 1571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 7/2014*)* of the *Indus.Tribunal-cum-Labour Court No. 1, Kolhapur* as shown in the Annexure, in the industrial dispute between the management of Ratnakar Bank Limited and their workmen.

[No. L-12012/74/2014- IR(B.-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL NO.1, AT KOLHAPUR

Reference(IT) No.7/2014.

(CNR No.MHIC09-000410-2014)

Between :

Ratnakar Bank Limited,

1st Lane, Shahupuri, Kolhapur

(Through its Vice-President) .. First Party.

And

Shri Avadhoot Prabhakar Ghorpade

A/p. Khadakewada,

Tal. Kagal, Dist. Kolhapur. .. Second Party.

CORAM : Sameena Khan, Presiding Officer.

ADVOCATES : Shri S.S. Shah, Advocate for First Party.

Shri S.K.Patil, Advocate for Second Party.

-: PART-I AWARD :-

(Date : 04.09.2019)

This is a reference, referred by the appropriate Government, in exercise of its power under clause (d) of Sub-section (1) and sub section (2A) of section 10 of the Industrial Dispute Act, 1947, vide order dated 16.12.2014, to adjudicate the dispute between the parties with following schedule ***"Whether the action of the management of Ratnakar Bank Limited in terminating the services of Shri Avdhoot Prabhakar Ghorpade, w.e.f. 05.08.2013, is justified? if not, to what relief the workman is entitled to?"***

2. On reference of this dispute the Second Party workman filed its statement of claim at Exh.U-3. The contentions and submissions of the workman as per statement of claim are summarized as follows:-

a) The workman was working with the First Party Bank in the capacity of Peon in clause-IV category in its Rukadi Branch.

b) He was issued with an order of suspension dated 28.07.2009, alleging charges of misappropriation.

c) Thereafter, after further lapse of 10 months he was issued with the charge-sheet dated 26.05.2010.

d) The workman submitted his reply to the charge-sheet on 23.03.2011, denying all the charges leveled against him.

e) The disciplinary proceeding was initiated against the workman by conducting domestic enquiry.

f) The Enquiry Officer submitted his report and findings, which was replied by the workman on 25.07.2013.

g) The workman was thereafter issued with an order of dismissal dated 05.08.2013.

h) The workman preferred an appeal to the appellate authority of the Bank, which was rejected.

i) The workman submits that the order of dismissal issued upon him is illegal and unjustified. The order of dismissal was proceeded by issuance of charge-sheet and conducting domestic enquiry. The domestic enquiry conducted against him is in total violation and in utter disregard of the principle of natural justice.

j) It is also submitted that the Bank has not considered the objection of the workman in respect of appointment of new Enquiry Officer in place of the earlier Enquiry Officer.

k) It is also submitted that the findings of the Enquiry Officer are perverse and not based on evidence before him. The Enquiry Officer has failed to consider the evidence on record and material points. Also the materials admissions by the witness of the management during the cross-examination is ignored.

3. The First Party Bank appeared in the matter and filed its written-statement at Exh.C-2, inter-alia, denying the entire contentions and submissions of the workman in his statement of claim. On behalf of the Bank it is submitted as follows:-

a) The workman was employee with Bank at its Rukadi Branch as Peon. Being relatively small establishment the workman was responsible for undertaking some additional duties.

b) In the month of June 2009, the Branch Manager of the concerned Branch received a Complaint in respect of unauthorized withdrawal from saving account of a customer in July 2008.

c) Upon preliminary, enquiry, it was revealed that there has been multiple withdrawals from May-July 2008 for which withdrawal slips could not be traced.

d) On questioning the workman did not give satisfactory answer however later on he was voluntarily tendered his confession on 03.06.2009. In the said confession letter the workman has clearly mentioned that from June 2007, onwards he has unlawfully withdrawn money from 25-30 different bank accounts from time to time, by forging signature of the customer amounting to about 3,00,000/-. In the confession letter he agreed to compensate the Bank for the last cause of it.

e) The Bank submits that domestic enquiry conducted against the workman is by adherence to the principle

of natural justice. The employee was given due opportunity to depend himself and participate in the inquiry proceedings.

f) The Bank further submits that the findings of the Enquiry Officer are based on evidence before him and not perverse.

g) It is also submitted by the Bank that, the workman did not examine himself in the enquiry although ample opportunity was given to him.

4. Since the workman has assailed the conduct of the enquiry and also the findings of the Enquiry Officer, issues were framed at Exh.O-8 and the same are being decided as preliminary issues.

5. Therefore considering the Schedule of Reference and rival pleadings of both the parties, following issues were framed at Ex.O-8. My findings on them, for the reasons stated below, are as under:-

ISSUES	**FINDINGS**
1) Whether the domestic enquiry conducted against second party workman is illegal and improper?	In the negative.
2) Whether the findings of enquiry officer are illegal and perverse?	In the negative.

: REASONS :

6. Heard Learned Advocate Shri S.S.Shah, on behalf of the First Party Bank and Learned Advocate Shri.S.K.Patil, on behalf of the Second Party Workman. Perused the statement of claim, the written statement, the enquiry papers and proceedings filed on record and material on record. Advocates for both the parties have strenuously argued the matter at length and have invited my attention to entire enquiry papers and proceedings.

Issue No.1

7. On perusal and scrutinizing the enquiry papers and proceedings, it is admitted factual position and beyond the pale of controversy that the workman was issued with the charge-sheet dated 26.05.2010 and his explanation was called for. Thereafter enquiry was initiated against him by appointing an Enquiry Officer. The workman participated in the enquiry through his defence representative, who was a Advocate. The workman was supplied with all documents filed during the enquiry. He was also given an opportunity to examine the management witness at length. He was given copy of the enquiry proceedings. The workman was also granted opportunity to examine himself during the enquiry.

8. The workman in his statement of claim has submitted that, he is not given an opportunity to examine himself during the enquiry. Per contra, the Bank has submitted that the workman though was given an opportunity to examine himself has not availed the same.

In this respect, it can be observed that the evidence on behalf of the Bank was completed on 18.07.2012 and the next date was fixed on 25.07.2012 for evidence of the workman. The defence representative, on behalf of the workman was present on that date and proceeding dated 18.07.2012 bears his signature. On 25.07.2012 the workman orally requested that he shall submit his defence statement on next date. Therefore the next date was fixed on 02.08.2012. Thereafter from time to time the enquiry was adjourned and lastly was fixed on 09.04.2013. On 09.04.2013, both the workman as well as his representative was present but they failed to lead evidence nor the workman examined himself. The enquiry was adjourned for arguments on request of the defence representative that he would submit written arguments on next date. Thereafter written arguments was filed by both the parties.

Therefore it is clear that though opportunity was granted to the workman to lead evidence on his behalf, he has failed to avail the same. Till the completion of the enquiry and even in the written arguments he has not raised any such grievances that he was not afforded with opportunity to examine himself or other witness on his behalf. The workman by his act, on his own has swayed away his right to lead evidence. Therefore ground put by the workman to assail the enquiry proceeding cannot be accepted.

9. According to me, considering the overall enquiry proceeding the workman was granted reasonable and proper opportunity in accordance with the principle of natural justice during conduct of enquiry. Therefore I hold that the enquiry conducted against the Second Party workman is legal and proper. Accordingly, issue no.1 is decided in negative.

Issue No.2

10. The charges leveled against the workman as per the charge-sheet dated 26.05.2010 was in respect of the illegal transaction committed by the workman, which amounted to act of misappropriation. The detail of the facts to arrive at such allegations are mentioned clearly in the charge-sheet. It is alleged that on 21.04.2007, the workman debited total amount to Rs.4500/- from the FDR loan account of 3 customers and credited it to his saving account. In similar way on 03.05.2007 he has debited an amount of Rs.3800/- from account of a customer and credited to his own saving account and also intentionally destroyed withdrawal slip from the record. It is further alleged that, similarly, on 01.10.2007, he debited a total amount of Rs.6100/- from account of 4 customers and credited the same to his saving account. Thereafter for a period between 16.01.2008 to 02.07.2008, he has withdrawn amount from time to time from the account of total 16 customers. Further it is alleged that he has not kept the withdrawal slips of about 38 customers on record between the period from 09.06.2008 to 30.07.2009. At the time of transaction, in this account the workman has used the tailor ID of Satish Kulkarni and has misappropriated the amount and also destroyed the related challans.

11. The workman immediately did not submit his explanation to the charge-sheet and vide an application dated 27.10.2010 called for certain documents from the Bank so as to submit his explanation. On 23.03.2011, the workman submitted his explanation. Vide his explanation he has denied the charges which were leveled against him. However the documents filed in the enquiry shows that on 03.06.2009, the workman has submitted in writing, admitting that he has misappropriated the amount. Further the workman has accepted the responsibility and submitted that he is ready to make good the loss caused to the Bank. However the workman in his explanation to the charge-sheet has not made any submission in respect of this application dated 03.06.2009.

12. Even otherwise, during enquiry, the Bank has filed voluminous documents on record to show that the workman has conducted the transactions as alleged against him in the charge-sheet. The Bank has also examined 2 witness on its behalf to substantiate the charges leveled against the workman. Both the witness have stated in support of the charge-sheet as well as documents filed on record. The workman in the cross-examination could not show anything to discard the said contentions of the witness. Also the workman has given a confession letter to the Bank that he is responsible for such unauthorized withdrawals, which he has not retaliated.

13. Therefore according to me, there is prudent and probable material before the Enquiry Officer so as to link the workman with the alleged misconduct. It therefore cannot be said that the findings of the Enquiry Officer is perverse.

14. In the case of **Workmen of Balmadies Estates Vs. Mangement, Balmadies Estates and others [(2008) 4 SCC 517]**, the Hon'ble Apex Court has held that the charges leveled upon a workman will have to be scrutinized on the basis of the evidence recorded, by applying the principle of probabilities. In paragraph No.10, it has been concluded as under :-

> **"10. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. The Indian Evidence Act, 1872 (in short the Evidence Act) is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility."**

15. Further in the case of **Divisional Controller Maharashtra State Road Transport Corporation, Division Latur, District Latur V/s Bhushan Jagannathrao Bulbule, Reported in 2018 III CLR Page No.691 Bombay High Court** it is held that -

> **"The fairness of the Enquiry Officers findings is to be assessed purely on the basis of his conclusions and it has to be seen, by going through the evidence recorded in the enquiry, as to whether, the findings of the Enquiry Officer are supported by reasons and whether, such conclusions are on the basis of the evidence recorded. If there is some evidence on record on the basis of which, the Enquiry Officer has drawn his conclusions after preponderance on the principles of probabilities, the findings can be sustained. If any of the findings of the Enquiry Officer are not supported by any evidence in the enquiry, the said findings can, therefore, be termed as being perverse."**

16. In this context, the judgment of the Honourable Supreme Court in the mater of **Kumaon Mandal Vikas Nigam Ltd. V/s Girja Shankar Pant and Others, 2001 (I) CLR 12,** is relevant, "The Honourable Supreme Court has noted that the records have to be considered while scrutinizing the allegations made by the delinquent and from such record, it has to be gathered as to how the enquiry has been conducted and whether, a reasonable opportunity was granted to the delinquent." It is also held that

"While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a findings which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person.

17. The powers of the Court/Tribunal are explained in the case law between ***Union of India V/s Upendra Sing*** **(1994 I CLR 534, SC)** and it has been appreciated and held that,

"**The Tribunal cannot take over the findings of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into, indeed, even after conclusion of the disciplinary authority, if the matter comes to the Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority, as the case may be. The function of the Court/Tribunal is one of judicial review."**

In this case law the Hon'ble Apex Court relied and considered the Judgment and decision of the Apex Court in ***Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. V/s Gopinath & Sons & Ors.*** **(1992 Supp.(2) SCC, 312)** and quoted that,

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination and the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, of a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in a Judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

18. Similarly, in case of ***B.C.Chartuvedi V/s Union of India & Ors.*** **(1996 I CLR 389, SC)** the Lordship of Apex Court observed that,

"**Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted of charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the enquiry was held by a competent authority or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact on conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein apply to the disciplinary proceeding. The Court/Tribunal in its power of judicial review does not act as appellate Court to re-appreciate the evidence and to arrive at its own independent findings on the evidence."**

19. Further in case between ***General Manager (Operations),*** **S.B.I. & anr. V/s R.Periyasamy (2015 I CLR 373, SC)** it is held that,

"**The Courts will not interfere with the findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The sufficiency or adequacy of evidence is not the ground on which the facts may be set aside."**

20. Therefore, considering this established position of law, the scope of learned Labour Court over findings of the Enquiry Officer being limited, it cannot re-appreciate or reassess the evidence before the Enquiry Officer and come to a different conclusion, when the findings of the Enquiry Officer are based on evidence before him.

21. Further, Lordship of Hon'ble High Court Bombay in case of **S.A. Awasthy V/s M.R. Bhope, Presiding Officer, 1st Labour Court and Ors. Reported in 1994 I CLR Page No.254** has held that :-

"In a criminal trial, no adverse inference can be drawn against an accused if the accused does not enter the witness-box. It is the cardinal principle of criminal jurisprudence that ordinarily the accused is not bound to open his mouth and the presumption of innocence would operate throughout. No such principle is applicable in a Civil proceeding or in domestic enquiry or in a proceeding before a Labour Court, Industrial Court or Industrial Tribunal. If the management discharges initial onus which lies on it to prove the allegations and the workman fails to discharge the shifted onus the case of the workman must suffer."

In this case, the management did discharge its initial onus to prove the allegations and the petitioner workman failed to rebutt the evidence led on behalf of the management.

22. Further in case of **Delhi Transport Corporation V/s Shyam Lal [Reported in 2004 III CLR Page No.287]**. It is held that :-

> **"The Hon'ble Apex Court has held that "It is fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon."**

In the present case the workman has failed to show anything on record so as to even suggest that his admission or confession could not be acted upon. Apart from this, the management in the present case has not mearly relied on the confession statement of the workman but has also led independent evidence to prove the charges against the workman.

23. I have carefully perused the synopsis of arguments filed on behalf of the Bank and also the case laws relied by them. There cannot be any deviation from the proposition of law held in the case laws and I am in respectful agreement with the propositions. The legal propositions in this case laws have been relied by me.

24. In view of the above legal propositions and factual conclusions, I do not find any reason or ground to hold the findings of the Enquiry Officer as perverse. Accordingly I hold that the findings of the enquiry Officer are legal and not perverse.

25. Hence I pass following order.

: ORDER :

1) The domestic enquiry conducted against the Second Party workman is legal and proper.

2) The findings of the Enquiry Officer are legal and not perverse.

3) The matter to proceed further.

Kolhapur.

SAMEENA KHAN, Presiding Officer

Date : 04.09.2019.

Asstt.Registrar,

Industrial Tribunal, Kolhapur.

Argued on : 31.07.2019

Judgment dictated on : 04.09.2019

Judgment transcribed on :04.09.2019

Judgment checked and signed on :04.09.2019.

नई दिल्ली, 21 सितम्बर, 2023

का.आ. 1572.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (21/2022) प्रकाशित करती है।

[सं. एल-41011/52/2022- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 21st September, 2023

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 21/2022) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Mumbai* as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen.

[No. L-41011/52/2022- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO. CGIT-1/21 of 2022

Parties: Employers in relation to the management of

Western Railway

And

Their workmen

Appearances:

For the first party Management : Mr.B.K.Ashok, Adv.

For the second party workmen : Absent.

Mumbai, dated the 25th day of August, 2023

AWARD

Learned counsel for the management is present, but none appears from the side of the union when the matter is called.

Record shows union has not been taking any steps since the inceptions of this reference. Record shows notice sent to the union on two occasions have returned undelivered with postal endorsement "unclaimed" and it is a settled law such service is deemed to be due service.

None appearance of the union which has espoused the present dispute despite having the knowledge of the present reference case an inference can be drawn that the union is no more interested to pursue with the dispute which it has raised against the management of Western Railway, Mumbai.

Be that as it may, the Govt. of India, Min. of Labour vide order NO.L-41011/52/2022 (IR(B-I) dated 11.10.2022 and in exercise of power conferred under section 10(1)(d) and (2A) of Industrial Disputes Act, 1947 by referring the following issue to this Tribunal for adjudication.

"Whether the demands raised by Pashchim Railway Karmachari Parishad Union, Mumbai against the Management of Western Railway, Mumbai on the issue of charter of demands (as per in Annexure 'A') are just? If yes, what relief the workmen are entitled to?"

Non-appearance of the union which has espoused the above dispute shows that union is no more interested to proceed with the dispute or it might have settled the dispute with the management.

In view of the above no dispute award is passed.

Accordingly, CGIT-21 of 2022 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1573.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अध्यक्ष एवं प्रबंध निदेशक नेशनल थर्मल पावर कॉर्पोरेशन लिमिटेड, लोधी रोड, नई दिल्ली; रेजिडेंट मैनेजर, मैसर्स यूटिलिटी पावरटेक लिमिटेड नेशनल थर्मल पावर रिहंद सुपर थर्मल पावर प्रोजेक्ट, सोनभद्र-(यूपी),** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अर्जुन प्रसाद गुप्ता, कामगार , द्वारा -राष्ट्रीय कार्यकारिणी मानवाधिकार उद्धार समाज कल्याण गनियारी पुरवा, सिंगरौली,**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार** औद्योगिक अधिकरण एवं श्रम न्यायालय, **लखनऊ**

पंचाट (संदर्भ संख्या 15/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/09/2023को प्राप्त हुआ था।

[सं..एल- 42012/2/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1573.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 15/2020**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chairman & Managing Director National Thermal Power Corporation Ltd. ,Lodhi Road, New Delhi ;The Resident Manager, M/s. Utility Powertech Ltd. National Thermal Power Rihand Super Thermal Power Project, Sonebhadra-(U.P.),** and **Shri Arjun Prasad Gupta, Worker, through-National Executive Human Rights Redemption Social Welfare Ganiyari Purva, Singrauli,** which was received along with soft copy of the award by the Central Government on 13/09/2023.

[No. L- 42012/2/2020- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 15/2020

Ref. No. L-42012/2/2020-IR(DU) dated 13.02.2020

BETWEEN

Sh. Arjun Prasad Gupta, National Executive Human Rights Redemption Social Welfare Ganiyari Purva, Indra Nagar Ward No.41/1098 Baidhan, Singrauli - 486889

AND

1. The Chairman & Managing Director National Thermal Power Corporation Ltd. NTPC Bhawan, Scope Complex, 7-Industrial Area, Lodhi Road,New Delhi - 110003

2. The Resident Manager, M/s. Utility Powertech Ltd. National Thermal Power Rihand Super Thermal Power Project, Po-Rihand Nagar,SONEBHADRA(U.P.) - 231223

AWARD

By order No. L-42012/2/2020-IR(DU) dated 13.02.2020 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"Whether the services of Sh. Prem Chand, workman and II other workmen as mentioned in Industrial Dispute dated 10.04.2017 are entitled for regularization in National Thermal Power Corporation Ltd. Rihand Super Thermal Power Project, Sonebhadra? If not, to that relief these workmen are entitled to and from which date?"*

Accordingly, an industrial dispute No. 15/2020 has been registered on 25.03.2020

From the perusal of record, the position which emerge out is that the till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 13.02.2020.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

Justice ANIL KUMAR, Presiding Officer

31st August, 2023

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1574.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **इंडियन टेलीफोन इंडस्ट्रीज लिमिटेड मनकापुर, जिला-गोंडा; निदेशक, आई.टी.आई. लिमिटेड मनकापुर, जिला-गोंडा; महाप्रबंधक, प्रबंधक,उत्पादन, आई.टी.आई. लिमिटेड मनकापुर, जिला-गोंडा;सहायक महाप्रबंधक, व्यक्तिगत एवं प्रशासन, आई.टी.आई. लि., मनकापुर, जनपद-गोण्डा,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री विजय बहादुर शुक्ला, कामगार,**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ पंचाट (संदर्भ संख्या 85/2022) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/09/2023को प्राप्त हुआ था ।

[सं.एल-42025/07/2023-192-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1574.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 85/2022**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Indian Telephone Industries Ltd. Mankapur, District-Gonda ; The Director, I.T.I. Ltd. Mankapur, District-Gonda; The General, Manager, Production, I.T.I. Ltd. Mankapur, District- Gonda ; The Assistant General Manager, Personal and Administration, I.T.I. Ltd., Mankapur, District-Gonda,** and **Shri Vijay Bahadur Shukla, Worker,** which was received along with soft copy of the award by the Central Government on 13/09/2023.

[No. L-42025-07-2023-192- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 85/2012

BETWEEN

Vijay Bahadur Shukla, S/o Sri Hari Prasad Shukla, resident of village-Narayanpur Mafi, Post Office-Jhalidham, Tehsil and District Gonda.

AND

1. Indian Telephone Industries Ltd. Mankapur, District-Gonda.
2. Director, I.T.I. Ltd. Mankapur, District-Gonda.
3. General, Manager, Production, I.T.I. Ltd. Mankapur, District- Gonda.
4. Assistant General Manager, Personal and Administration, I.T.I. Ltd., Mankapur, District-Gonda.

AWARD

The present industrial dispute has been filed by the workman, Upendra Nath Tiwari before this Tribunal for adjudication as per provisions section 2A of the Industrial Disputes Act, 1947 (14 of 1947).

Accordingly, an industrial dispute No. 85/2012 has been registered on 14.12.2012.

From the perusal of record, the position which emerge out is that after exchange of pleadings by an order dated 18.11.2019 the matter was fixed for filing of workman's evidence; however, when the workman did not file its oral evidence in spite of several opportunities, opportunity to file his evidence was closed vide order dated 24.12.2020 and management was afforded an opportunity to file its evidence on affidavit. The management also did not file any evidence.

Thereafter on 25.11.2022 an order was passed, quoted herein below:

"Case called out.

None for claimant

Sri Adarsh Jagdhari Ld. Counsel for the respondent submits, respondent does not want to file management evidence on affidavit, as claimant has not filed any evidence in support of his case, and his right to file evidence has already closed.

Accordingly, list for hearing on 12.12.2022."

When the matter was taken up for hearing on 12.12.2022, in revised cause list, the following order was passed:

"Matter taken up in revised casue list.

Sri Adarsh Jagdhari for appellant.

None for workman.

Heard Sri Jagdhari & perused record.

File reserved for order."

Needless to mention that from the perusal of order sheet, it appears that neither workman nor his authorized representative has appeared to press the case on behalf of the claimant since 17.06.2020.

Accordingly, after hearing Sri Adarsh Jagdhari, learned authorized representative of the opposite parties and taking into consideration the facts the position which emerges out is that as no oral/documentary evidence has been filed on behalf of the claimant to support his claim, as such, the adjudication case is liable to be dismissed.

Taking into consideration the above said facts as well as the law laid by Hon'ble High Court in the case of *V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194* as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of *M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164* Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

Hon'ble Allahabad High Court in the case of *District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519* has held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

Thus, taking into consideration the facts on record that in the present case the workman has not filed any oral/documentary evidence in support of his claim, so the same is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

05th September, 2023

Let two copies of this award be sent to the Ministry for publication.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1575.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, नेशनल थर्मल पावर कॉर्पोरेशन, ऊंचाहार, जिला-रायबरेली-(उ.प्र.); मैसर्स गोविंद कंस्ट्रक्शन, पीहर, ऊंचाहार, जिला.रायबरेली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सत्येन्द्र कुमार, कामगार,**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार** औद्योगिक अधिकरण एवं श्रम न्यायालय, **लखनऊ पंचाट(संदर्भ संख्या 01/2022) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/09/2023को प्राप्त हुआ था।

[सं.एल- 42025-07-2023-191- आईआर-(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1575.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 01/2022**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, National Thermal Power Corporation, Unchahar, Distt. Raebareli- (U.P.);M/s Govind Construction, Phar, Unchahar, Distt. Raebareli,** and **Shri Satyendra Kumar, Worker,** which was received along with soft copy of the award by the Central Government on 13/09/2023.

[No. L- 42025-07-2023-191- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 01/2022

Ref. No. K-10/1-14/2021-IR dated 31.12.2021

BETWEEN

Shri Satyendra Kumar S/O Shri Maiku Lal, Village Pure Baba

Basi, Rihayak, Post Karaouli, Budhkar, Raebareli.

AND

1. The General Manager, National Thermal Power Corporation,

Unchahar, Distt. Raebareli-229406. (U.P.).

2. M/s Govind Construction, Type 6/46, Phar, Unchahar, Distt.Raebareli.

AWARD

By order No. K-10/1-14/2021-IR dated 31.12.2021 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"Whether the action of management of M/s Govind Construction, Raebareli, a contractor of National Thermal Power Corporation Limited, Unchahar in terminating the services of Shri Satyendra Kumar S/O Shri Maiku Lal, Electrician w.e.f. 31.08.2020 is legal and justified? If not, to what relief the workman is entitled to and from which date?"*

Accordingly, an industrial dispute No. 01/2022 has been registered on 04.01.2022

From the perusal of record, the position which emerge out that till date the claimant/workman has not filed any statement of claim.

Moreover, as a matter of fact and record, neither workman nor its authorized representative has turned up before this Tribunal nor has filed any statement of claim in spite of repeated notices.

Findings & Conclusion:

Taking into consideration the fact that as till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 31.12.2021.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to*

appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;*** wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

31st August, 2023

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1576.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री रामनरेश, कामगार,**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार** औद्योगिक अधिकरण एवं श्रम न्यायालय, **लखनऊ पंचाट (संदर्भ संख्या 72/2011) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/09/2023 को प्राप्त हुआ था।

[सं. एल- 42025-07-2023-193-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1576.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 72/2011**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through**

Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and **Shri Ram Naresh, Worker,** which was received along with soft copy of the award by the Central Government on 13/09/2023.

[No. L- 42025-07-2023-193-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 72/2011

BETWEEN

Ram Naresh, son of Rajkumar,

Resident of Village Kanchanpur Matiari,

Post Chinhat, District Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah, Sanitation Contractor, 504, Viman Nagar, G.T. Road. Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No.72/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government

which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri Arjun Singh, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded on behalf of the claimant by way of pleading the said contention was rebutted on the basis of pleading in the statement of claim (and submits that in view of the facts as stated hereinabove) especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

On the written statement as well as in paragraph 1 of the counter affidavit relevant portion is quoted herein below:-

In pursuance thereof, the concerned workman along with 35 other workman moved another application for withdrawal of the names from the said adjudication case which was allowed by the Hon'ble Industrial Tribunal-II U.P. Lucknow vide order dated 20.07.2010 and accordingly the concerned workman along with 32 other workmen filed on an application before the Regional Labour Commissioner (Central), Lucknow which was registered as No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

The Regional Labour Commissioner (Central), Lucknow on its turn called upo0n the parties for conciliation proceedings and in pursuance thereof the employers i.e. Hindustan Aeronautics Limited appeared before him and filed their objections and due to negative attitude of the employers, no settlement could be arrived between the parties. Thus, it is clear that the Industrial Disputes as existed between the parties are continuing one and on account of the fact that 45 days as specified under Section 2-A (2) of the Industrial Dispute Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 has been expired as such an application was filed on behalf of eh workmen seeking permission to withdrew the case and to approach the Hon'ble Court on 27.01.2010, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow and at the relevant point of time, the employees have also not raised any objection to the said application. It is therefore, the present case is fully maintainable in the eyes of law before this Hon'ble Court and the Hon'ble Court is fully empowered to adjudicate upon the dispute as exiting between the parties.

I have heard the learned counsel for respondent Sri Adarsh Jagdhari inspite of notice neither the workman nor representative is present on his behalf and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but

a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act

and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was

introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266,***

Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided"*.

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman/Sri Ram Naresh cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW.

20.07.2023

Justice ANIL KUMAR Presiding Officer

नई दिल्ली, 22 सितम्बर, 2023

का.आ. 1577.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **प्रबंधन गैरीसन इंजीनियर (ई/एम) लाल बहादुर शास्त्री मार्ग लखनऊ; मेसर्स उन्नति इंजीनियर्स उस्मान एन्क्लेव, सेक्टर ओ, अलीगंज लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री रवि कुमार, कामगार,**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार** औद्योगिक अधिकरण एवं श्रम न्यायालय, **लखनऊ पंचाट (संदर्भ संख्या 29/2018) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/09/2023को प्राप्त हुआ था।

[सं. एल- 14012/27/2017 - आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd September, 2023

S.O. 1577.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 29/2018**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Management Garrison Engineers (E/M) Lal Bahadur Shashtri Marg Lucknow; M/s Unnati Engineers Usman Enclave, Sector O, Aliganj Lucknow,** and **Shri Ravi Kumar, Worker,** which was received along with soft copy of the award by the Central Government on 13/09/2023.

[No. L- 14012/27/2017 - IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 29/2018

No. L-14012/27/2017 - IR(DU) dated 21.08.2018

BETWEEN

Sh Ravi Kumar S/o Sh Ramnaresh 225, Vishramkheda Dahiya, Mohanlal Ganj Lucknow – 226301

AND

1. The Management Garrison Engineers (E/M) Lal Bahadur Shashtri Marg Lucknow - 226002
2. The Management M/s Unnati Engineers Usman Enclave, Sector O, Aliganj Lucknow – 226024

AWARD

By order No. L-14012/27/2017 - IR(DU) dated 21.08.2018 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"Whether the action of M/s Unnati Engineers, Lucknow & Management Garrisson Engineers (E/M), Lucknow in terminating the services of Sh. Ravi Kumar, employed as Electrician since the year 2006 till 08.09.2015, is legal and proper? If not, then what relief is the workman entitled to?"*

Accordingly, an industrial dispute No. 29/2018 has been registered on 22.10.2018.

Brief facts of the case:

Facts of the case, as taken by the claimant in his statement of claim is that he was engaged on the post of electrician by respondent no.2/M/s Unnati Engineers, Lucknow in the year 2006 and worked continually upto 07.09.2015; however, his services have been terminated w.e.f. 08.09.2015 without assigning any reason in contravention to the provisions as contained u/s 25-F of the Industrial Disputes Act, 1947.

Accordingly, a prayer has been made that his termination be set aside and he be reinstated with consequential benefits.

On 01.12.2020, behalf of the respondent no. 2, preliminary objection as well as written statement has been filed; wherein it has been submitted that the claimant was never appointed with it; but was contractual employee, engaged in pursuance to contact entered with the respondent no. 1/Garrison Engineers, Lucknow in the year 2011.

It is further stated in the written statement that the respondent no. 2 never had registration as contractor in the year 2006, so there was no occasion of any appointment of applicant in year 2006 and also there was no violation of any of the provisions of the Act as contract with the respondent no. 1 came to an end on 21.04.2015 and the applicant left his work on his own sweet will.

From perusal of the order sheet, the position, emerged out that on 01.12.2020 time was granted to the workman to file rejoinder affidavit.

On 03.10.2022, an order was passed that last opportunity is granted to workman to file its rejoinder affidavit; however, the claimant did not file rejoinder affidavit and his opportunity was closed and matter was listed for ex-parte hearing.

On 18.04.2023, when the matter was taken up in revised cause list, parties remain absent; accordingly, the case was reserved for order.

Findings & Conclusion:

Thus, taking into consideration, the above said facts as well as the material on record, the admitted position which emerged out that after filing of statement of claim no oral/documentary evidence has been filed on behalf of the claimant to support his claim, as such, the adjudication case is liable to be dismissed.

So, in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;*** wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

Thus, taking into consideration the facts on record that in the present case the workman has not filed any oral/docume=ntary evidence in support of his claim, so the same is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

LUCKNOW.

26th July, 2023.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2023

काआ. 1578.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यस बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (33/2021) प्रकाशित करती है।

[सं. एल- L-12025/01/2023- IR(B.I) -65]

सलोनी, उप निदेशक

New Delhi, the 22nd September, 2023

S.O. 1578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.33/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bhuaneswar* as shown in the Annexure, in the industrial dispute between the management of Yes Bank and their workmen.

[No. L-12025/01/2023- IR(B.I)-65]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-cum-LABOUR COURT, BHUBANESWAR

Present:

Shri Dinesh Kumar Singh,

Presiding Officer,

CGIT-cum-Labour Court, Bhubaneswar

ID Case No. 33 of 2021

Date of passing award – 16th day of June, 2023

Between

1. The Sr.Vice President,
   Yes Bank, Govt. Banking,
   Bapuji Nagar, Bhubaneswar -754141
2. The Sr. Group President,
   Yes Bank Ltd., Yes Bank Tower,
   IFC-2, 15th Floor, Senapatibapati Marg,'
   Elphinstone (W), Mumbai-400012… 1st Party Management

AND

Shri Santosh Kumar Patnayak,

E Sadhucharan Pattanayak,

Vill-Mulishingh, P.S.-Soro,

Dt- Balasore, Odisha-756045 … 2nd Party Union

Appearances:

Shri Sunil Kumar Patnaik … For 1st Party Managements

Shri Santosh Kumar Pattnayak … For 2nd Party Workman (Self)

AWARD

The Government of India in the Ministry of Labour & Employment, New Delhi have referred the present dispute existing between the employers in relation to the Management of Yes Bank and their Workman Shri Santosh Kumar Patnaik under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) vide their order No. L-8(89)/2020-B.II/Adj/2021-B.I dated 19.5.2021 to this Tribunal for adjudication to the following effect.

SCHEDULE

"Whether the Applicant, Vice-President, Yes Bank is Workman or not under Sec. 2(s) of the I.D. Act.? If yes, whether the action of the management of Yes Bank in terminating the services of Shri Santosh Kumar Pattanayak, Vice-President of Yes Bank, Bhubaneswar, without conducting any domestic inquiry is legal and justified? If not what relief the workman is entitled to and from what date?

2. After receipt of the schedule of the reference and the Statement of Claim filed by the 2nd Party-Workman notice was issued to the 1st Party-Managements for filing of their Written Statement to which the 1st Party-Management duly filed during course of adjudication.

3. The 2nd Party-Workman in his Statement of Claim has stated that on receipt of offer of appointment dated 26.6.2019, he joined in the management bank as a Relationship Manager on 11.7.2019 and continued as such with a gross monthly salary of Rs.1,69,505/- till the termination of his services. The Management-Bank is a Non-Government company registered by the Registrar of Companies, Mumbai and involved in various banking activities. Though the Management-Bank for its convenience have appointed the 2nd Party-Workman with designation of Vice President-Govt. Banking and Relationship Manager-Government Banking at its Bhubaneswar branch but the nature of duties of the 2nd Party-Workman was merely manual, clerical and operational as per the directions of the superior authorities and never performed any managerial or supervisory function. Besides this the 2nd Party-Workman took various other stands to prove himself to be a 'WORKMAN' as defined under Section 2(s) of the Industrial Disputes Act, 1947 (14 of 1947).

4. The 2nd Party-Workman further averred that the Management-Bank before giving him the punishment of termination from services with one month notice pay, have not given him the opportunity to defend himself for which the action of the management amounts to illegal retrenchment which is not sustainable in the eye of law. He prayed to pass an award declaring the termination of his service as illeal, unjustified and amounts to unfair labour practice with a direction for his reinstatement with full back wages and continuity of services with all consequential benefits.

5. On the other hand, the 1st Party-Management in their Written Statement inter-alia have averred that the 2nd Party-Workman was appointed as Vice President, Government banking segment at Yes Bank Ltd, and was functioning in managerial cadre along with administrative works of the Management. The gross annual salary of the 2nd Party-Workman was fixed at Rs. 22,00,000/ (Rupees Twenty Two Lakhs) only with a monthly gross remuneration of Rs.1,69,505/- (Rupees One Lakh Sixty Nine Thousand Five Hundred Five) only. Owing to the above grounds, the 2nd Party is not an workman within the definition of Section 2 (s) of the I.D. Act, 1947 (14 of 1947).

6. The 1st Party-Management further averred that the appointment of the 2nd Party-Workman was governed by the terms and conditions contained in his appointment letter dated 26.6.2019 which he has agreed and accepted on 10.7.2019 and also undertook to abide by all the terms and conditions stated in the said appointment letter. Hence, following the terms and conditions contained in the above appointment letter, the services of the 2nd Party-Workman was terminated with the payment of an amount equivalent to 30 (thirty) days salary in lieu of notice pay for which there was no wrong committed in taking action against the disputant.

7. However, during the course of adjudication, both the parties have settled the present dispute out of court and filed original copy of their settlement in Form – H containing 06 (six) numbers of terms and conditions as agreed

between the parties to this dispute. Submitting their Memorandum of Settlement, both parties prayed the Tribunal to close this case in terms of the settlement arrived at between them.

8. Considering the facts and circumstance and the submissions of the stake holders of this case, the Tribunal is of the opinion that whatever dispute was existing between the 1st Party-Management and the 2nd Party-Workman has already been settled. Hence the award is passed in terms of the Memorandum of Settlement arrived at between the 1st Party-Management and the 2nd Party-Workman. The Memorandum of Settlement filed by the parties in this case forms part of the award.

9. This is the award of this Tribunal.

Dictated and corrected by me.

DINESH KUMAR SINGH, Presiding Officer

BEFORE THE PRESIDING OFFICER, C.G.I.T. – CUM LABOUR COURT, BHUBANESWAR

I.D. CASE NO. 33/2021

FORM – H

SEE RULE – 58

MEMORANDUM OF SETTLEMENT

NAME OF PARTIES:

1. **M/s. YES BANK LIMITED**
2. **Sr. Group President, YES BANK LIMITED**
3. **The Sr. Vice President, YES BANK Ltd**

….1st Party/Management

Versus

Santosh Kumar Pattanayak ….2nd Party/Workman

SHORT RECITAL OF THE CASE

1. That, the present case has arisen from the reference made by the Dy. Chief Labour Commissioner (Central) Bhubaneswar vide its order dated 19.05.2021 for adjudication before the Learned Court
2. That, workman (Complainant) was appointed as Vice President, Government Banking segment at YES Bank Ltd in managerial cadre as per appointment letter dated 26.06.2019. That while in probation, the employment of the Claimant was terminated with effect from 17.02.2020 vide termination letter dated 11.02.2020. The Claimant filed an application before labour commissioner against such termination. That the schedule of reference is as follows: "Whether the Applicant, Vice-President of YES Bank is a workman or not under Sec-2 (s) of the I.D. Act? If yes, whether the action of the management of YES Bank in terminating the service of Shri. Santosh Kumar Pattanayak, Vice President of YES Bank, Bhubaneswar without conducting any domestic inquiry is legal and justified? If not, what relief the workman is entitled to and from what date?
3. That, during pendency of the case the Claimant approached the Management and requested for closure of the present case and since there is no cause of action against the 1st party/Management, the 1st Party/Management has no objection for the same. Both the parties have agreed to execute the present Memorandum of Settlement as follows:

TERMS AND CONDITIONS

1. That, both the parties agreed to file this Memorandum of Settlement as both the parties agree that there is no cause of action against the 1st Party/Management.
2. That, both the parties have no objection if the case will be closed and the reference case may be awarded as no dispute case.
3. That, both the parties pray before the Learned Court for early closure of the Case I.D. 33/2021 and the reference be disposed of with no claim award and the Workman/Claimant has no claim against the Management (YES Bank) or any of its employees in any manner at present or in future whatsoever.
4. That, the 2nd Party/Workman shall not initiate / file/reagitate the matter and the 2nd Party /Workman or any person claiming through him or otherwise shall not file any claim before any court of law like Civil, Criminal and Labour Authority/Court in future.

5. That the 1st Party shall also not initiate any action in respect of the instant case.

6. That, it is also agreed between the parties that they shall submit this Memorandum of Settlement before the Court of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar in ID Case No. 33/2021, for recording and settlement of the case between the parties and issuance of no claim award.

IN WITNESS hereto the 1st Party Management and 2nd Party Workman have signed this Memorandum of Settlement on this 24th of May 2023 in presence of witnesses.

WITNESSES:

1. 1st Party Management

2. 2nd Party Workman

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1579.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मैकू लाल, कामगार,** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार** औद्योगिक अधिकरण एवं श्रम न्यायालय, **लखनऊ पंचाट (संदर्भ संख्या 91/2011) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25/09/2023 को प्राप्त हुआ था ।

[सं.एल- 42025-07-2023-195-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th September, 2023

S.O. 1579.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 91/2011**) of the **Central Government Industrial Tribunal cum Labour Court–Lucknow,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow,** and **Shri Maiku Lal, Worker,** which was received along with soft copy of the award by the Central Government on 25/09/2023.

[No. L- 42025-07-2023-195- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 91/2011

BETWEEN

Maiku Lal, son of Sri Lallu

Resident of 631/635,

Ismailganj, Post Chinhat,

Faizabad Road, District Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah, Sanitation Contractor, 504, Viman Nagar, G.T. Road. Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 91/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri Arjun Singh, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and

gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section

10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman/ Maiku Lal cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW.

19.07.2023

Let two copies of this award be sent to the Ministry for publication.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1580.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (36/2021) प्रकाशित करती है।

[सं. एल-39025/01/2023- IR(B.-II)-22]

सलोनी, उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.36/2021) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen.

[No. L- 39025/01/2023- IR(B.-II)-22]

SALONI, Dy. Director

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, KANPUR

PRESENT

SOMA SHEKHAR JENA

HJS (Retd.)

I.D. No. 36 of 2021

BETWEEN

Shri Ashish Mishra,

General Secretary, United Forum of We Bankers, New MIG-53,

Hemant Vihar, Barra-2,

Kanpur (U.P.), 208027.

AND

The Chief Executive Officer/ Managing Director,

Punjab National Bank, Corporate Office, Plot No. 4,

Sector-10, Dwarka, New Delhi – 110075.

AWARD

This Tribunal was called upon to answer the reference stated in Schedule below by the notification No. L-12011/23/2021- IR(B-II) dated 02.08.2021 Issued by the Government of India.

SCHEDULE

"Whether the demand of Union, United Forum of We Bankers, Kanpur for conversion the part time sweepers into full time after amalgamation of United Bank of India and Oriental Bank of Commerce with Punjab National Bank for the purpose of maintaining uniform policy is legal and justified? If yes, what relief the concerned workmen is entitled to?"

The averments made by the claimant union in the statement of claim may be summarized as stated hereinafter:

That Department of Financial Services, Ministry of Finance, Government of India in consultation with Reserve Bank of India formulated a Scheme named as "Amalgamation of United Bank of India and Oriental Bank of Commerce into Punjab National Bank Scheme 2020" duly publishing the same in Gazette of India as Notification no. G. S. R. 153 (E) dated 4th March 2020. In terms of the said Scheme United Bank of India and Oriental Bank of Commerce got merged into Punjab National Bank w.e.f. 1st April, 2020. As per the definition given in Para 2 of the Scheme, Punjab National Bank is defined as Transferee Bank whereas United Bank of India and Oriental Bank of Commerce have been defined as Transferor Banks.

It is stated that after amalgamation of the erstwhile United Bank of India (hereinafter stated in short as the U.B.I) and the erstwhile Oriental Bank of Commerce (hereinafter stated in short as the O.B.C.) with the Punjab National Bank (hereinafter stated in short as the P.N.B.) anomalous situation arose in respect of the service conditions of the Part-Time Sweepers engaged in the P.N.B. vis-à-vis the service condition of the Peon cum House-Keeper of the O.B.C. and the House-Keeper cum Sub-Staff of the U.B.I. It is averred by the claimant union that all the above stated categories of workmen do the same of type of work inside the office premises. It is averred that after amalgamation of the above stated three banks U.B.I., O.B.C. and P.N.B. on 01.04.2020 they are legally entitled to be absorbed as full time subordinate staff of the new P.N.B. with service conditions akin to the service conditions of the counter parts such as Peon cum House-Keeper and House-Keeper cum Sub-Staff. It was incumbent upon the management of the transferee bank i.e. P.N.B. to formulate a placement scheme by way of determination of placement of employees of the transferor banks including determination of their inter se seniority vis-à-vis the employees of the transferee bank i.e. the P.N.B. II in terms of the provisions in sub clause 16 of clause 4 of the scheme for bringing about uniformity in designation and nature of duties and for removal of disparity amongst them with regard to their service conditions. The claimant union has relied on the change of service status of similarly placed Part-Time sweepers to Full-Time sub staff of the Syndicate Bank on the merger with the Canara bank . In substance it is averred by the claimant union that after amalgamation of the U.B.I. and the O.B.C. with the previous P.N.B. on 01.04.2020 there should be one uniform policy governing the service conditions and the wage structure of the Part-Time Sweepers and all similar employees of the Three banks rendering similar type of job.

The averments of the O.P. management in the written statement may be concisely reproduced as stated hereinafter:

O.P. management has filed the written statement raising preliminary objection that the claimant union is not a union having membership of majority of workmen.

In the rejoinder the claimant union has reiterated the justifiability of the part-time sweepers of the P.N.B. to get absorbed on regular posts of the P.N.B. with uniformity of service conditions of similarly placed workers.

For adjudication of the industrial dispute as stated in the afore stated reference the following points are to be addressed:

1. Whether the PTS (Part Time Sweeper) employed in P.N.B. are legally entitled to be absorbed on regular vacancies of the P.N.B. soon after merger of the O.B.C. and the U.B.I. with the erstwhile P.N.B. as on 01.04.2020 for the purpose of maintaining uniform policy of similarly placed workers.
2. Whether the claim of the claimant union is legally tenable.

For the sake of convenience, the above stated two points are taken up for discussions simultaneously. The claimant union has contended that soon after merger on 01.04.2020 all similarly placed workers should have been conferred with similar service conditions governing their status, work and wages in the new P.N.B. in accordance with Article 14, 16 and 21 of the Constitution of India. Even at the time of argument it was contended on behalf of the claimant union that the three holy rivers the Ganges, The Yamuna and the Saraswati after Sangam (meaning holy merger) flow under one name the Ganga and the existence of the entities of the water of the three holy rivers are treated as the holy waters of the river Ganga. It is further contended that same treatment should be meted to the Part-Time Sweepers engaged in the P.N.B. vis-à-vis the service conditions of the Peon cum House-Keeper of the O.B.C. and the House-Keeper cum Sub-Staff of the erstwhile U.B.I. Though it is vehemently argued on behalf of the claimant union that on the principle of equal pay for equal work the PTS of the P.N.B. deserve regular wages it is doubtful if the Part-Time Sweepers of the P.N.B. can legally claim such higher wages paid to the regular sub staff of the said bank by relying on the changed circumstances that occurred with amalgamation of the three banks U.B.I., O.B.C. and P.N.B. It is contended on behalf of the claimant union that after the time of merger on 01.04.2020. There were 5222 PTS in the P.N.B. and from the U.B.I. 296 surplus House Keeping Sub Staff were absorbed in P.N.B. who are to be regularized on permanent vacancies. It is further contended that Twenty five per cent of the vacancies roughly coming to 950 can be filled up from the pool of Part- Time Sweepers.

Though the claimant union vehemently asserts permeation of the benefits already conferred on the House-Keeper cum Sub Staff and Peon cum House keeper by their previous employers (implying the U.B.I. and the O.B.C.) the claim appears to be erroneous and unsustainable in law. At this point, it is apposite to state here that with merger of the U.B.I. and the O.B.C. with the P.N.B. on 01.04.2020 the conditions of employment governing the those employees of U.B.I. and O.B.C. are treated to be nonest after merger and the employees of the O.B.C. and U.B.I. are to be governed as per the merger gazette notification dated 4th, March 2020 issued by the Government of India Finance Department. It may be logically held that the service conditions of the erstwhile P.N.B. employees and the Part-Time Sweepers cannot be altered to the detriment of the contract of service governing their status and future prospects but the PTS cannot legally claim to be automatically absorbed on permanent vacancies relying on the policies previously adopted by U.B.I. and O.B.C. The so called resolution adopted by the National Commission for Schedule Tribes relied on by the claimant union cannot be a ground to flout the general policy of recruitment and the rigid rules of recruitment which govern the matter of filling up of the vacancies in any Public Sector Bank. The Tribunal is not vested with any authority to issue any direction under law for violation of the rigid rules of recruitment and to encourage any kind of back door filling of vacancies or back door regularization by way of any artistic artificial cause of action imbued with tapestry of averments. It is doubtful if a resolution of the National Commission for Schedule Tribes can be followed as rule of law. Similarly, a memorandum of settlement arrived on 28.02.2020 under section 18 (1) read with section 2P of Industrial Disputes Act, 1947 between the management of Syndicate Bank and the Syndicate Bank Employees' Union cannot be read as Euclid's Theorem for adjudication of the dispute at hand.

It has been pointed out by the claimant union that Mandeep Kaur and Paramjeet Kaur have been appointed against permanent vacancies in Moga Circle. It is doubtful if the aforesaid appointments cited by the claimant union are of any relevancy for adjudication of this reference proceeding. It has been vehemently contended by the claimant union that best of the three service conditions existing in the transferor and transferee banks is to be adopted but on going through the merger gazette notification dated 04th March, 2020 and in the scheme for regularization it is clear that no such stipulation was envisaged in the scheme.

On-going through the memorandum of settlement between the Management of O.B.C. and its workmen dated 01.11.2011 and the policy sated in the circular dated 20.02.2016 issued by U.B.I. it is seen that those erstwhile transferor Banks had taken graded approach in the matter of conversion of Part Time Sweepers to Full Time Sweepers who were later designated as Housekeeping cum Sub Staff in U.B.I. Even on cumulative reading of the para 13 and para 16 of the Gazette of India notification it cannot be logically concluded that the Part Time Sweepers of the

Transferee Bank would be conferred the status of Full Time employees by virtue of amalgamation effected on 01.04.2020.

Negative equality is not followed as of binding precedence before a Tribunal.

In view of the discussions stated above both the points are answered against the claimant union.

The reference is answered in the negative.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1581.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ पटियाला के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय नं 1 चण्डीगढ के पंचाट (76/2013) प्रकाशित करती है।

[सं. एल-12012/11/2013- IR(B.I)]

सलोनी, उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 76/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Chandigarh* as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen.

[No. L- 12012/11/2013- IR(B.I)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh.

Present: Sh. J. K. Tripathi, Presiding Officer.

ID No.76/2013

Registered on:-12.06.2013

Sh. Baldev Singh S/o Sh. Amar Singh, R/o Village Radhu, PO Ropari, Tehsil Sarkaghat, District Mandi(HP).

……..Workman

Versus

1. The General manager (Operation), State Bank of Patiala, Head Office, Urban Estate, Phase-II, Patiala (Punjab).
2. The Branch Manager, State Bank of Patiala, Branch Sarkaghat, Distt. Mandi (HP).

…….Respondents/Managements

Award

Passed on:- 25.08.2023

Central Government vide Notification No.L-12012/11/2013-IR(B-I) Dated 28.05.2013, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of State Bank of Patiala in terminating the services of Sh. Baldev Singh S/o Sh. Amar Singh w.e.f. 31.08.2011 is just, valid and legal? If not, then what relief the workman is entitled for and what directions are necessary in the matter?

1. On the receipt of the above reference, notice was sent to the workman as well as to the management. The workman has filed its claim statement, alleging therein that the workman was engaged as a casual labourer to do labour work and as per employer petitioner-worker did not completed 240 days in each calendar year as well as last twelve calendar preceding months from the date of his alleged termination since the said period of 240 days was not completed and there was no statutory requirement for making payment of retrenchment compensation and one month's pay in lieu of notice period. The Branch Manager as Administrative Head of the Branch and to meet exigency of work and for smooth running of Branch is competent to hire the services of casual irregular labour. There

is no service by laws of bank regarding appointment of workman on casual basis. Hence, bank denies that workman was appointed under any bye-laws of the Bank also while terminating the irregular services of the workman there was no need to comply with necessary provisions since the requisite period of 240 days in each calendar as well as last twelve calendar preceding month from the date of alleged termination was not completed by the workman. It is for the bank to state clearly in what capacity and what arbitrary rues framed by the bank for such unlawful appointments as claimed by Bank's Sarkaghat Branch Manager. Workman was duly appointed under valid rules/law and the workman has completed qualified days to be entitled for all consequential reliefs. It is therefore prayed that the workman be reinstated in service.

2. The management has filed written statement to the claim statement filed by the workman, alleging therein that the reference is not maintainable as the services of the workman were never dismissed, terminated or retrenched by the respondent-management because of the reasons that the workman was never employed by the respondent on regular, temporary or adhoc basis and no appointment letter was ever issued to the workman. The Branch Manager has no power or authority to appoint anyone in the bank. The Bank has its own Rules and Regulations of appointment in the bank. The claim is not maintainable as there does not exist any relationship of employee and employer between the workman and the answering-respondent and no appointment letter has been issued to the workman. The workman does not fall within the definition of workman under the Industrial Disputes Act as the workman has not completed requisite number of 240 days of service continuously in the preceding year. The workman was paid his wages at daily rates for the number of days he had worked. Under the Rules and Regulations of the bank only regular employees are employed against the regular post that too after following the regular procedure of appointment. The workman is not entitled for the retrenchment compensation as the workman has not completed 240 days of his service in the proceeding calendar year. No show cause notice, no charge sheet and enquiry was required to be issued and conducted. It is therefore, respectfully prayed that in view of the submissions made above, the workman is not entitled for reinstatement or any other relief in the facts and circumstances of the case.

3. The workman filed replication to the written statement filed by the management, alleging therein that the workman was a regular employee of the respondent-bank as appointed by the respondent-bank. There is direct and legal relationship between workman and respondent-bank. The remaining paras alleged in the written statement are denied by the workman.

4. During the pendency of the proceedings on 25.08.2023, the case was fixed for filing affidavit by the workman but none has appeared on behalf of workman. Several opportunities have already been given to the workman for filing affidavit but none turned up in spite of several opportunities afforded. This shows that the workman is not interested in adjudication of the case on merit.

5. Since the workman has neither put his appearance for long nor he has filed any evidence in support of his case. Therefore, the case of the workman is dismissed in default for the non-prosecution of the workman.

6. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

J.K. TRIPATHI, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 27/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. **एल**.–22013/01/2023-आई. आर. (**सी.एम-II**)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 27/2020***)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 13***/09/2023***

[No. L-22013/01/2023– IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM –LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 27/2020

Ref. No.-D-821/AB/2020/13/IRDN dt. 03/9.09.2020

BETWEEN

1. Sri Brijesh Saxena S/o Shri Jagannath
   Village- Sallia Jan Bahadurganj, PS-Pagavan
   District Shahjahanpur (U.P.)
2. Sri Rajendra Saxena (Representative)
   M/s Keshav Singh and Ors. T.P. No. 315, Katia Tolla,
   Shahajanpur (U.P.)

AND

1. The General Manager (Principal Employer)
   FCI, Regional Office, TC/3 V, Vibhuti Khand, Gomti Nagar, Lucknow-226010
2. The Regional Manager (Appointing Authority)
   FCI, District Office, Shahjahanpur (UP)

AWARD

By Order No. D-821/AB/2020/13/IRDN dt. 03/9.09.2020 present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of Sub- Section (1) and sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) by the Central Government.

> *"Whether the termination of the service of Sri Jagannath, who was engaged in Roja Depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, Contractor of FCI, for the period 08.07.2008 to 23.04.2010 is proper and justified.*
>
> *If not, to what relief, the workman is entitled to?"*

Accordingly an industrial dispute No. 27/2020 has been registered.

On 28.02.2023 an order was passed by which time was granted to claimant to file written statement failing which the matter should be proceeded for ex-parte hearing.

Thereafter on 23.05.2023 when the matter was taken up for hearing neither workman/legal representative appeared nor any statement of claim was filed.

Accordingly I have heard Sri B.P. Singh learned counsel for respondent and perused on record.

As till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 03/9.09.2020

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of V.K. Industries Vs. Labour Court (I) and others 1981 (29) FLR as under:-

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raised a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief".*

In the case of M/s Uptron powertronics Employees' Union, Ghaziabad through its Secretary V. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164 Hon'ble Allahabad High Court has held as under:-

"*The law has been settled by the Apex Court in case of Shankar Chakravarti Vs Britannia Biscuit Co. Ltd., V.K. Raj Industries V. Labour Court and Ors., Airtech Private Limited Vs. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led*

by or on behalf of the workman reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish and allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of District Administrative Committee U.P. P.A. C.C.S.C. Services V. Secretary-cum- G.M. District Co-Operative Bank Ltd. 2010 (126) FLR 519; wherein it has been held as under:-

"*The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed".*

Once workman had not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief:-

Lucknow

Date: 11.07.2023

Let two copies of this award be sent to the Ministry for publication.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, लखनऊ के पंचाट (पहचान **संख्या 23/2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. **एल**.–22013/01/2023-आई. आर. (**सी**.एम -II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 23/2020***)* of t**he Central Government Industrial Tribunal-cum-Labour Court, Lucknow** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on 13***/09/2023.***

[No. L-22013/01/2023 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM –LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 23/2020

Ref. No.-D/831/AB/2020/23/IRDN dt.02/9.09.2020

BETWEEN

1. Sri Sandeep Kumar Son of Sri Tota Ram
   Village- Mau Durg. PO-Bhatpura Tehsil-
   Puvayan. District Shahjahanpur (U.P.)-
2. Sri Rajendra Saxena (Representative)
   M/s Keshav Singh and Ors. T.P. No. 315, Katia Tolla,

Shahajanpur (U.P.)

AND

1. The General Manager (Principal Employer)

FCI, Regional Office, TC/3 V, Vibhuti Khand, Gomti Nagar, Lucknow-226010

2. The Regional Manager (Appointing Authority)

FCI, District Office, Shahjahanpur (UP)

AWARD

By order No. D/831/AB/2020/23/IRDN dated 02/9.09.2020 present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of Sub- Section (1) and sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) by the Central Government, with following schedule:

"Whether the termination of the service of Sri Sandip Kumar S/o Shri Tota Ram, who was engaged in Roja Depot of FCI, Shahajanpur, (U.P.) by M/s Keshav Singh, contractor of FCI, for the period 08.07.2008 to 23.04.2010 is proper and justified.

If not, to what relief, the workman is entitled to?"

Accordingly an industrial dispute No. 23/2020 has been registered.

By an order 16.09.2022 last opportunity was granted to claimant to file written statement thereafter once again opportunity was granted to file written statement failing which the matter should proceed for ex-parte hearing.

On 23.05.2023 when the matter was taken up for hearing neither the claimant/legal representative appeared on his behalf nor claim petition was filed.

Accordingly I have heard learned counsel for respondent and perused on record.

Taking into consideration the fact till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 02/9.09.2020.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of V.K. Industries Vs. Labour Court (I) and others 1981 (29) FLR as under:-

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raised a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief".

In the case of M/s Uptron powertronics Employees' Union, Ghaziabad through its Secretary V. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164 Hon'ble Allahabad High Court has held as under:-

"*The law has been settled by the Apex Court in case of Shankar Chakravarti Vs Britannia Biscuit Co. Ltd., V.K. Raj Industries V. Labour Court and Ors., Airtech Private Limited Vs. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish and allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of District Administrative Committee U.P. P.A. C.C.S.C. Services V. Secretary-cum- G.M. District Co-Operative Bank Ltd. 2010 (126) FLR 519; wherein it has been held as under:-

"*The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed".*

As the workman had not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief:-

Lucknow

Date: 11.07.2023

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगरेनी कोलियरी कंपनी लिमिटेडके प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, हैदराबाद के पंचाट (पहचान **संख्या 7/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2023** को प्राप्त हुआ था।

[सं. एल.–22012/108/2017–आई.आर. (सी.एम–II]

मणिकंदन एन., उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 7/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD** as shown in the Annexure, in the industrial dispute between the Management of **Singareni Colliery Company Ltd.** and their workmen, received by the Central Government on **07*/08/2023***

[No. L-22012/108/2017 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 13th day of July, 2023

INDUSTRIAL DISPUTE No. 7/2018

Between:

The General Secretary,

(Sri Riaz Ahmed)

Singareni Miners & Engg. Workers Union(HMS)

H.No.C-34, Sector-I, Godavarikhani – 505209.

Peddapalli (TS) ……Petitioner

AND

The General Manager,

M/s. Singareni Collieries Company Ltd.,

Ramagundam-I,

Area, Godavarikhani-505 209. … Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana , K. Vasudeva Reddy & B. Kiran Kumar, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma and Vijaya Laxmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-22012/108/2017-IR(CM.II) dated 11.12.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Dist., designating Sri Thati Rajaiah, Ex-Coal Cutter, Cat. VI as General

Mazdoor(Surface), Cat.I by protecting wages in Cat.I instead of Cat.VI with effect from 1.12.1996 is justified or not? If not, what relief the worker is entitled for ?"

The reference is numbered in this Tribunal as I.D. No. 7/2018 and notices were issued to the parties concerned and the Petitioner entered appearance.

2. On the date fixed for filing of claim statement Petitioner remained absent. After filing the vakalath, Petitioner did not file any claim statement.

3. After filing vakalath Petitioner did not file any claim statement despite sufficient number of opportunities have been provided to him. It thus becomes crystal clear that the petitioner seems to be not interested in pursuing his case and as such a no claim award is given against the workman/petitioner. As such, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 13th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents for the Respondent

NIL

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, हैदराबाद के पंचाट (पहचान **संख्या 03/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2023** को प्राप्त हुआ था।

[सं. एल.–**22011**/29/2017-**आई.आर-** (सी.एम–II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 03/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on **07*/08/2023.***

[No. L-22011/29/2017 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - Sri Irfan Qamar, Presiding Officer

Dated the 14th day of July, 2023

INDUSTRIAL DISPUTE No. 3/2019

Between:

The General Secretary,

Food Corporation of India

Workers Union(INTUC),

58/1, Diamond Harbour Road,

Kolkata – 700023. ..….Petitioner

AND

1. The General Manager,

   Food Corporation of India,

   HACA Bhawan, Opp.Public Gardens road,

   Hyderabad – 500 004.

2. The Area Manager,

   Food Corporation of India, FSD,

   Amudalavalasa

   Dist. Srikakulam. … Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : Sri T. Vijaya Bhaskara Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-22011/ 29/2017-IR(CM-II) dated 28.2.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Food Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of Food Corporation of India in not converting 175 left over Society workers as DPS workers in Gudiwada Depot is justified or not? If not, to what relief are the workers entitled to?"

The reference is numbered in this Tribunal as I.D. No.3/2019 and notices were issued to the parties concerned and the Petitioner entered appearance.

2. Petitioner absent on the date fixed for filing of claim statement. Respondent present. Despite service of notice and sufficient opportunity provided to the Petitioner he did not file any claim statement till date. It seems that Petitioner do not want to pursue his case. Since the Petitioner has not substantiated his claim as per reference, a 'No Claim' award is passed. Transmit.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 14th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 सितम्बर, 2023

का.आ. 1586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, हैदराबाद के पंचाट (पहचान **संख्या 1/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **07/08/2023** को प्राप्त हुआ था।

[सं. एल.–22011/26/2017–आई.आर. (सी.एम–II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 25th September, 2023

S.O. 1586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(ID. No. 1/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, HYDERABAD** as shown in the Annexure, in the industrial dispute between the Management of **Food Corporation of India** and their workmen, received by the Central Government on **07*/08/2023.***

[No. L-22011/26/2017 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - Sri Irfan Qamar, Presiding Officer

Dated the 14th day of July, 2023

INDUSTRIAL DISPUTE No. 1/2019

Between:

The General Secretary,

Food Corporation of India

Workers Union(INTUC),

58/1, Diamond Harbour Road,

Kolkata – 700023. ..….Petitioner

AND

1. The General Manager,

   Food Corporation of India,

   HACA Bhawan, Opp.Public Gardens road,

   Hyderabad – 500 004.

2. The Agent Manager,

   Food Corporation of India, FSD,

   Amudalavalasa

   Dist. Srikakulam. … Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent: Sri T. Vijaya Bhaskara Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-22011/ 26/2017-IR(CM-II) dated 26.2.2018 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Food Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of Food Corporation of India in not converting the left over 120 Society workers as DPS workers in Amadalavalsa Depot is justified or not? If not, to what relief are they is entitled to from which date?"

The reference is numbered in this Tribunal as I.D. No. 1/2019 and notices were issued to the parties concerned and the Petitioner entered appearance.

2. Petitioner absent on the date fixed for filing of claim statement. Respondent present. Despite service of notice and sufficient opportunity provided to the Petitioner he did not file any claim statement till date. It seems that Petitioner do not want to pursue his case. Since the Petitioner has not substantiated his claim as per reference, a 'No Claim' award is passed. Transmit.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 14th day of July, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 26 सितम्बर, 2023

का.आ. 1587.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर बिहार ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं 2 धनबाद के पंचाट (01/2019) प्रकाशित करती है।

[सं. एल-12025/01/2023- IR(B.I)-90]

सलोनी, उप निदेशक

New Delhi, the 26th September, 2023

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 01/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2 Dhanbad* as shown in the Annexure, in the industrial dispute between the management of Uttar Bihar Gramin Bank and their workmen.

[No. L-12025/01/2023- IR(B.I)-90]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT

Dr.S.K.Thakur

Presiding Officer

In the matter of an application under Sec.2-A(3) of the I.D.Act

APPLICATION NO. 01 OF 2019.

PARTIES Sri Vinay Kumar Tiwari & 485 Others

S/O Sri Rajnarayan Tewari

R/O At & PO: Baliya ,PS: Maharajganj,Distt Siwan, Petitioner

Vs.

i) Uttar Bihar Gramin Bank,

Muzafarpur, Bihar

Respondent

APPEARANCES :

On behalf of the workman/Union :Mr.D.Mukherjee Ld.Adv.

On behalf of the Management :Mr,R.R.Prasad , Ld.Adv.

State :Bihar Industry: Banking

Dated, Dhanbad,the 22nd, June,2023

ORDER

I.D.Case No. 01/2019

1. On perusal of the application filed by the Petitioner it has been found that the present application has been filed after order of Hon'ble High Court at Patna Orders in the following cases:

(a) IN THE HIGHCOURT OF JUDICATURE AT PATNA

CIVIL WRIT JURISDICTION CASE NO. 8666 of 2017

1. Uttar Bihar Gramin Bank Mitra Association and 3 Ors

…….. PETITIONER

Vs.

The Union of India through Ministry of Labour & Employment ,Government of India, New Delhi through its Secretary and 5 Ors.

……

RESPONDENT

CM: HONORABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER Date 11-04-2018

The Learned Counsel for the petitioner seeks permission to withdraw the present writ petition with a liberty to approach the Labour Court.

In view of the aforesaid, the present writ petition is disposed of as withdrawn with liberty to the individually effected workmen to approach the competent Labour Court for adjudication of their disputes.

(Mohit Kumar Shah,J)

……..

(b) IN THE HIGH COURT OF JUDICATURE AT PATNA

LETTERS PATENT APPEAL NO.237 OF 2018

CIVIL WRIT JURISDICTION CASE NO. 14839 of 2017

1. Uttar Bihar Gramin Bank Mitra Association through its president Vinay Kumar Tiwary

2. Vinay Kumar Tiwary S/o Raj Narayan Tiwary ,At/PO:Baliya Siwan & 2 Ors. ……Appellants

Versus

1. The Union of India through the Ministry of Finance, Jeevan Deep Building,Sansad Marg, New Delhi

2. The Secretary ,Department of Financial Services, Ministry of Finance,Jeevan Deep Building, Sansad Marg,New Delhi & 7 Ors.

ORAL ORDER

Per: (HONOURABLE THE CHIEF JUSTICE)

03-04-2018……..

Learned Counsel for the petitioner prays for permission to withdraw the appeal with liberty to raise an Industrial Dispute with regard to the issue in question under the Industrial Dispute Act., 1947.

The Letters Patent Appeal is permitted to be withdrawn with the aforesaid Dismissal of the appeal shall not come in the way of the appellant in raising the dispute under the Industrial Disputes Act and canvassing the grievance of employees concerned.

(Rajendra Menon,CJ)

(Rajeev Ranjan Prasad,J)

2. As per direction of the Hon'ble High Court, Patna in LPA No. 237/2018 the Petitioner was to raise an Industrial Dispute with regard to the issue in question under the Industrial Dispute Act, 1947.It is relevant to mention here that 1st petitioner in the said Letter Patent Appeal (LPA) was Utter Bihar Gramin Bank Mitra Association.

3. As per provisions under the Industrial Dispute Act 1947 the Petitioners should have raised the dispute for common cause under Industrial Dispute Act 1947 for a common cause for the members of the said Association which might be referred to the Tribunal by the Appropriate Government under Sec. 10(1) of the Industrial Dispute Act,1947.

4. Instead of raising dispute by the 1st Petitioner, Uttar Bihar Gramin Bank Mitra Association, for common cause for its members under Sec. 10(1) of the Industrial Dispute Act 1947 a combined application has been filed by one Shri Vinay Kumar Tiwary ,President Uttar Bihar Gramin Bank Mitra Association under Section 2-A (3) of the Industrial Dispute Act 1947.

5. Provisions under Sec. 2 A are reproduced below for immediate reference :(2-A Dismissal. etc. of an Individual workman to be deemed to be an Industrial Dispute (1)Where any employee discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of ,such discharge,dismissal,retrenchment or termination shall be deemed to be an individual dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.)

(2) Notwithstanding anything contained in Sec. 10,any such workman as is specified in Sub Sec. (1) may, make an application direct to the Labour Court or Tribunal for adjudication for the dispute referred to therein after expiry forty-five days from the date he has made an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of the Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an Industrial dispute referred to it by the appropriate Government.

(3) The application referred to in Sub-Sec.2 shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge ,dismissal, retrenchment or otherwise termination of service as specified in Sub. Sec. (1)

6. On perusal of the provision under Sec. 2-A, Sub Section 1 and Sub Section 2 it is clearly observed that those provisions have been made for individual workman. Provisions under Sec., 2-A(1 & 2) do not provide provision for making application direct to the Labour Court/Tribunal for adjudication of the dispute for a Group/Bunch of workmen.

7. As such filing of application by Uttar Bihar Gramin Bank Mitra Association for 486 persons together for a common cause grievance is not maintainable as per provisions of Sec.2-A(1) and Sec.2-A(2) of the Industrial Dispute Act,1947.

8. Accordingly application filed on 04.03. 2019 by the President ,Uttar Bihar Gramin Bank Mitra Association for 486 persons together is rejected.

9. However it is also found relevant to record here that this specific point over non-maintainability of the application filed by the Petitioners (Uttar Bihar Gramin Bank Mitra Association) could not be raised by the Management side and as such the matter proceeded for adjudication on merit from both sides which caused delay in taking the above decision by this Tribunal on non-maintainability of instant `application filed under Sec. 2-A(3) of the I.D.Act,1947 as submissions were perused by the Tribunal only after closure of the hearing on pleadings from both sides.

Dr.S.K.THAKUR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2023

का.आ. 1588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एयरलाइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, नं. **1**. मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-**1/19/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/09/2023** को प्राप्त हुआ था।

[सं. एल.–11012/09/2022-आई. आर. (सी.एम-I)]

मणिकंदन एन., उप निदेशक

New Delhi, the 26th September, 2023

S.O. 1588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. REFERENCE No. CGIT- 1/19/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court,No.1, Mumbai** as shown in the Annexure, in the industrial dispute between the Management of **Singapore Airlines Limitet** and their workmen, received by the Central Government on **18*/09/2023.***

[No. L-11012/09/2022 – IR (CM-I)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO. CGIT-1/19 of 2022

Parties: Employers in relation to the management of

M/s.Singapore Airlines Limited

And

Their workmen

Appearances:

For the first party Management : Mrs.Jayata Das, Adv.

For the second party workmen : Mr.Rahul Jalan, Adv.

Dated the 23rd day of August, 2023

AWARD

Both sides are represented by their respective learned counsels.

The learned counsel for the management of Singapore Airlines files reply to the application filed by the union on 27.7.2023. Let it be taken on record.

The application dated 27.7.2023 filed by the union is taken up for hearing. By filing the application the union wants to withdraw the present case in view of the memorandum of settlement executed between the management and the union on 30.5.2023. The management too concede that the dispute under reference has already been amicably settled between the union and the management. Accordingly, memorandum of settlement was executed between the union and the management on 30.5.2023. Therefore, she submits that she has no objection if the union is permitted to withdraw the present reference case.

However, the Central Government, Min. Of Labour by order No. L-11012/09/2022–IR (CM-I) dated 24.08.2022 in exercise of power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 has referred the following issue to this Tribunal for determination.

"Whether the demand of Singapore Airlines Employees Association vide their letter dated 03/03/2022 to the Management of Singapore Airline Ltd for similar payment of ex-gratia amount to various workmen working under the Singapore Airline Ltd is fair, legal and justified? If yes, to what relief they are entitled to?"

Since the dispute under reference has already been settled between the union and the management by executing memorandum of settlement dated 30.5.2023, there is no need to delve further in the dispute.

Accordingly, the reference case no. CGIT-19 of 2022 stands withdrawn and accordingly award to that effect is passed.

Justice K.D.BHUTIA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2023

का.आ. 1589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एयरलाइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, नं. **1**. मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-**1/16/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/09/2023** को प्राप्त हुआ था।

[सं. एल.–11012/05/2022-आई. आर. (सी.एम-I)]

मणिकंदन एन., उप निदेशक

New Delhi, the 26th September, 2023

S.O. 1589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. REFERENCE No.CGIT- 1/16/2022*)* of the **Central Government Industrial Tribunal-cum-Labour Court,No.1, Mumbai** as shown in the Annexure, in the industrial dispute between the Management of **Singapore Airlines Limitet** and their workmen, received by the Central Government on **18*/09/2023*.**

[No. L-11012/05/2022 – IR (CM-I)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/16 of 2022

Parties: Employers in relation to the management of

M/s.Singapore Airlines Limited

And

Their workmen

Appearances:

For the first party Management : Mrs.Jayata Das, Adv.

For the second party workmen : Mr.Rahul Jalan, Adv.

Dated the 23rd day of August, 2023

AWARD

Both sides are represented by their respective learned counsels.

The learned counsel for the management of Singapore Airlines files reply to the application filed by the union on 3.7.2023. Let it be taken on record.

The application dated 3.7.2023 filed by the union is taken up for hearing. By filing the application, the union wants to withdraw the present case in view of the memorandum of settlement executed between the management and the union on 30.5.2023. The management too concede that the dispute under reference has already been amicably settled between the union and the management. Accordingly, memorandum of settlement was executed between the union and the management on 30.5.2023. Therefore, she submits that she has no objection if the union is permitted to withdraw the present reference case.

However, the Central Government, Min. Of Labour by order No. L-11012/05/2022–IR (CM-I) dated 14.7.2022 in exercise of power conferred under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 has referred the following issue to this Tribunal for determination.

"Whether the action of management of M/s.Singapore Airline Ltd. in the guise of extending of all the benefits of earlier settlement of 2015-2018 for subsequent period for 01/04/2018 to 31/03/2021 and denying the demands as mentioned in new Charter of Demand 2018 (enclosed as Annexure-C) raised by Singapore Airline Employees Association is proper, legal and justified? If not, what relief the union concerned is entitled to and from which date?"

Since the dispute under reference has already been settled between the union and the management by executing memorandum of settlement dated 30.5.2023, there is no need to delve further in the dispute under reference.

Accordingly, the reference case no. CGIT-16 of 2022 stands withdrawn and accordingly award to that effect is passed.

Justice K. D .BHUTIA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2023

का.आ. 1590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पवन हंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, नं. **1**. मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-**1/16/2018)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/09/2023** को प्राप्त हुआ था।

[सं. एल.–11012/05/2018-आई. आर. (सी.एम-I)]

मणिकंदन एन., उप निदेशक

New Delhi, the 26th September, 2023

S.O. 1590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. REFERENCE No.CGIT- 1/16/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court,No.1, Mumbai** as shown in the Annexure, in the industrial dispute between the Management of **Pawan Hans Limitet** and their workmen, received by the Central Government on **18*/09/2023.***

[No. L-11012/05/2018 – IR (CM-I)]

MANIKANDAN. N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE K.D.BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/16 of 2018

Parties: Employers in relation to the management of

M/s.Pawan Hans Ltd

And

Their workmen

Appearances:

For the first party Management : Mr.Lancy D'Souza Adv.

For the second party workmen : Absent.

Dated the 23rd day of August, 2023

AWARD

The management is present through its learned counsel Mr.Lancy D'Souza and who undertakes to file vakalatnama.

The record shows union which has espoused the dispute, despite due service of notice upon it in the year 2018, has failed to put it appearance and file statement of claim. Therefore, a presumption can be drawn that the union which has espoused the dispute against the management is no longer interested to pursue the dispute perhaps it no longer has any dispute with the management or already settled the dispute with the management.

Be that as it may, the Central Government, Min. Of Labour by order no. L-11012/05/2018 – IR(CM-I)I in exercise of the power conferred under section 10(1)(d) and (2A) of the I.D.Act referred following dispute to this Tribunal for adjudication.

(i) Whether the Helicopter Pilots employed by M/s. Pawan Hans Ltd. for off shore operation of ONGC Ltd. are workmen under the provisions of section 2(s) of I.D.Act, 1947?

(ii) If so, whether the transfer of Pilots from northern region, Delhi to Western Region, Mumbai by withdrawing their 6-3 and 4-2 On/Off SPR system amounts to an ID under the ID Act, 1947?

(iii) If yes, whether the action of the management of M/s. Pawan Hans Ltd. vide office order no.PHL/CO/PERS/1371/5345 & Office Order No. PHL/CO/PERS/1371/5346 both the dated 17.10.2014 in transferring the 21 Pilots including the 11 Pilots under the dispute as per Annexure-A attached, by shifting their SPR from Delhi to Mumbai and introducing '6 days on and 1 day off system' in place of 6-3 or 4-2 weeks On/Of SPR system, is legal, proper and justified?

(iv) And, what relief they are entitled to? Also what directions are necessary in this regard?

In view of the above, no dispute award is passed.

Accordingly, reference case no.CGIT-16 of 2018 is disposed of.

Justice K.D.BHUTIA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1591.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं 1 मुंम्बई के पंचाट (12/2008) प्रकाशित करती है।

[सं. एल-41011/45/2007 -IR(B.-I)]

सलोनी, उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.12/2008*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1 Mumbai* as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen.

[No. L-41011/45/2007- IR(B.-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present

JUSTICE KESANG DOMA BHUTIA

Presiding Officer

REFERENCE NO.CGIT-1/ 12 of 2008

Parties: Employers in relation to the management of

Central Railway

And

Central Railway AC (E&M) Staff Association

Appearances:

For the first party Management : Ms.Komal Singh, Adv.

For the second party workmen : Absent.

Mumbai, dated the 22nd day of August, 2023.

AWARD

Management is present through its learned counsel.

None appears from side of the union when matter is called.

Record shows the union has not been taking any step since 11.04.2023 and today has been fixed for filing withdrawal application by the union. Order sheet dated 29.12.2022 shows that learned counsel for the union had submitted before the Tribunal that the union is no more interested to proceed further with the reference case and had sought accommodation to file a withdrawal application. Unfortunately, neither the union nor its counsel took any trouble to file any withdrawal application as prayed for. Further, non-appearance of the union proves that the union is no more interested to proceed with the case.

However, the Govt. of India, Min. of Labour by order no.L-41011/45/2007-IR (B-I) dated 10.3.2008, in exercise of power conferred under section 10(1)(d) and (2A) of the ID Act, 1947 has referred the following issue to this Tribunal for adjudication.

> "Whether the action of the management of Central Railway, Mumbai Division, Mumbai by not restructuring of the ACCM & ACCA cadre for promotion is justified? If not, what relief, the ACCM & ACCA staffs are entitled to?"

Record shows the union has filed its claim statement and rejoinder against the written statement filed by the management, but there is neither oral or documentary evidence in the record to substantiate the contents of claim statement or to adjudicate the issue under reference.

Having regard to such facts, no dispute award is hereby passed. Accordingly the reference case No.CGIT-12 of 2008 is hereby disposed of.

Justice KESANG DOMA BHUTIA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1592.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (119/2001) प्रकाशित करती है।

[सं. एल-12012/295/2000 - IR(B.-I)]

सलोनी, उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.119/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/295/2000- IR(B.-I)]
SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri Irfan Qamar, Presiding Officer**

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 119/2001

Between:

Sri K. Ramanjaneyulu,
S/o Venateswarulu,
5th Ward, Nr. Lamkamma Temple,
Avanigadda, Krishan Distt. … Petitioner

And

The Assistant General Manager,
State Bank of India,
Zonal Office, RG-II,
Labbipet,
Vijayawada -520 003. …..Respondent

Appearances:

For the Petitioner : Sri Suman, Advocate

For the Respondent : Sri Y. Ranjith Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/295/2000-IR(B.I) dated 24.4.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Vijayawada Zone in dismissing services of Shri K. Ramanjaneyulu, Ex.Messenger, by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No.119/2001 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

"(1) affirming the impugned common order of the learned single Judge to the "extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;

(2) The further findings and directions issued through the impugned common order are vacated;

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, " *Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."*

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows**:

The petitioner, Sri K. Ramanjaneyulu was working as a Messenger in the State Bank of India from 1980 to 1984. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to backward class. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 4 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment " by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270.days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after I.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel he valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated l6.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view

of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December. 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated l6.8.1990 stated in its counter affidavit as follows:

"*Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment aha absorption of temporary employees in public sector bunks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.*

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be

appointed cither for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from I.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

> *"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":*

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the cand1dates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subord1inate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one tine and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990 In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not binds the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact, when

settlements were arrived at in the year 1987, the Central Government directed the respondent management to give vide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June. 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployee, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption

for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 6 documents which were marked as Ex.W1 to W5. Ex.W1 isservice certificate, Ex.W2 is the news paper advertisement, Ex.W3 is interview call letter, W4 is circular/notification, Ex.W5 is circular. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

I. Whether the action of the Respondent Management in terminating the services of the workman, Sri K. Ramanjaneyulu, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?

II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?

III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II**:- The workman claims that he had been working with the Respondent Bank since 1980 on temporary basis. In the year 1988, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1989 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees' of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W1 is the service certificate according to which the workman has worked for total number of 239 days. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was appointed as temporary messenger with effect from 1980 for 86 days. I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment as a temporary messenger. I was called for interview and my name was included in the panel of temporary messengers. The panel was prepared basing on the no. of days of service put in by the temporary employees. Some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel. I was not given any letter stating that I was terminated from service. I did not give any letter stating that I was terminated from service and that I want reinstatement into service. I did not work for 240 days in any year in my entire service in the bank. It is not true to say that I was terminated from service and that I am not getting the work as the vacancies were filled up by the bank with the temporary employees from the panel. I am not having any document to show that any of my juniors are continuing in service. I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank." On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list 1991 however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire

temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that**:

> *"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*
>
> *"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine*
>
> *first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment**.** However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not*

tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case **of State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held**:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held** :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri K. Ramanjaneyulu, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri K. Ramanjaneyulu, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Ramanjaneyulu	MW1: Sri Rupakula Prakash Babu

Documents marked for the Petitioner

Ex.W1: Photocopy of service certificate

Ex.W2: Photocopy of newspaper notification

Ex.W3: Photocopy of interview call letter

Ex.W4: Photocopy of notification

Ex.W5: Photocopy of circular dated 14.7.1999

Documents marked for the Respondent

Ex.M1: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87

Ex.M2: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988

Ex.M4: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991

Ex.M5: Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995

Ex.M6: Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996

Ex.M7: Photocopy of Memorandum of understanding dt. 27.1.1997

Ex.M8: Photocopy of statements giving the particulars of 1989 messenger panel.

Ex.M9: Photocopy of statement of 1989 Non0messenger panel

Ex.M10: Photocopy of statement of 1992 panel

Ex.M11: Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98

Ex.M12: Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1593.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (118/2001) प्रकाशित करती है।

[सं. एल-12012/293/2000 - IR(B.-I)]

सलोनी, उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.118/2001*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/293/2000- IR(B.-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT, HYDERABAD

Present: Sri Irfan Qamar, Presiding Officer

Dated the 18th day of September, 2023

INDUSTRIAL DISPUTE No. 118/2001

Between:

Sri Ch. Jaya Kumar,

S/o Subba Rao,

8th Ward,

Avanigadda-521121

Krishan Distt. … Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office, RG-II,

Labbipet,

Vijayawada -520 003. …..Respondent

Appearances:

For the Petitioner : Sri Suman, Advocate

For the Respondent : Sri Y. Ranjith Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/293/2000-IR(B.I) dated 26.4.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Vijayawada Zone in dismissing services of Shri Ch. Jaya Kumar, Ex.Messenger, by way of oral orders w.e.f. 31.3.1997 is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No.118/2001 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

"(1) affirming the impugned common order of the learned single Judge to the "extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;

(2) The further findings and directions issued through the impugned common order are vacated;

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, " *Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."*

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows**:

The petitioner, Sri Ch. Jaya Kumar was working as a Messenger in the State Bank of India from 1986 to 1994. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to backward class. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 4 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment " by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270.days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after I.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel he valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated l6.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select

panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December. 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated l6.8.1990 stated in its counter affidavit as follows:

> "*Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment aha absorption of temporary employees in public sector bunks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.*
>
> *The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.*
>
> *As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.*
>
> *As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.*
>
> *It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".*

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be

appointed cither for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from I.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

> *"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":*

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the cand1dates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subord1inate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one tine and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990 In fact the management failed to implement the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not binds the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact,

when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give vide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June. 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployee, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption

for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 6 documents which were marked as Ex.W1 to W6. Ex.W1 is service certificate, Ex.W2 is the news paper advertisement, Ex.W3 is panel list W4 is service certificate, Ex.W5 is circular/notification circular and Ex.W6 is . On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

I. Whether the action of the Respondent Management in terminating the services of the workman, Sri Ch. Jaya Kumar, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?

II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?

III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II**:- The workman claims that he had been working with the Respondent Bank on 9.5.1986 on temporary basis. In the year 1988, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates in the year 1991 and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees' of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. Further he stated Ex. W4 is the service certificate according to which the workman has worked for total number of 276 days. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination, "I was appointed as temporary messenger on temporary basis w.e.f. 9.5.1986 for 85 days. I was not sponsored by any employment exchange. I did not undergo the regular selection process before my appointment as a temporary messenger. I was called for interview and my name was included in the panel of temporary messengers. The panel was prepared basing on the no. of days of service put in by the temporary employees. Some of the employees whose names were included in the panel were given regular employment in the bank in order of their seniority in the panel. I was not given any letter stating that I was terminated from service. I did not give any letter stating that I was terminated from service and that I want reinstatement into service. I did not work for 240 days in any year in my entire service in the bank. It is not true to say that I was terminated from service and that I am not getting the work as the vacancies were filled up by the bank with the temporary employees from the panel. I am not having any document to show that any of my juniors are continuing in service. I am not having any document to show that any person who had worked for less no. of days than me was given regular appointment in the bank." On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list 1991 however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments

were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that**:

> *"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."*
>
> *"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine*
>
> *first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"*

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment**.** However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

> *"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not*

tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case **of State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held**:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held** :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri Ch. Jaya Kumar, Ex.Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri Ch. Jaya Kumar, Ex. Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the day of September, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Ch. Jaya Kumar	MW1: Sri Rupakula Prakash Babu

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of newspaper notification
Ex.W3:	Photocopy of panel list
Ex.W4:	Photocopy of service certificate
Ex.W5:	Photocopy of circular
Ex.W6:	Photocopy of circular / audit report dt.14.7.99

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88
Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non0messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1594.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **निदेशक, मैसर्स. इंडस टावर लिमिटेड, विमान नगर, पुणे; निदेशक, मेसर्स। टीमलीज़ सर्विसेज लिमिटेड, चर्च रोड, पुणे,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सचिन वसंत पवार, कामगार,द्वारा-इंडस मोबाइल टावर तकनीकी कर्मचारी संगठन, पवन नगर, एन-9, सिडको, औरंगाबाद,** के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय-2 औरंगाबाद** पंचाट(संदर्भ संख्या **33/2018**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26.09.2023को प्राप्त हुआ था।

[सं. एल-42025/07/2023-197-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th September, 2023

S.O. 1594.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2018) of the **Labour Court-2 Aurangabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, M/s. Indus Tower Ltd., Viman Nagar, Pune ;The Director, M/s. Team Lease Services Ltd., Church Road, Pune, and Shri.Sachin Vasant Pawar,Worker, throgh-Indus Mobile Tower Technical Karmachari Sanghatana, Pawan Nagar, N-9, CIDCO, Aurangabad,** which was received along with soft copy of the award by the Central Government on 26.09.2023.

[No. L-42025/07/2023-197-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE 2nd LABOUR COURT AT AURANGABAD

(Presided over by : Shri. S. S. Sahasrabudhe)

Reference IDA no. 33 / 2018 **Exh.O-6**

CNR No. MHLC200027402016

1) The Director, M/s. Indus Tower Ltd., **...First Party no.I**

E crore, Office no.2010, 2nd Floor, Marvbel Edge,

Viman Nagar, Pune. Pune-411 014.

2) Director, M/s. TeamLease Services Ltd., **First Party no.II**

Office # 509, 5th Floor, Nucleus MLL, 1

Church Road, Pune-411001

Vs.

Shri.Sachin Vasant Pawar represented by Union, **.. Second party**

Indus Mobile Tower Technical Karmachari

Sanghatana, C/o. Shri.Narayan V. Ghule, 75/5, K Sector,

Pawan Nagar, N-9, CIDCO, Aurangabad-431 003.

AWARD

1. The Deputy Director, Government of India, Ministry of Labour / Shram Mantralaya, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this industrial dispute to this Court for adjudication of industrial dispute between the employers in relation to the management of M/s. Indus Tower Ltd., and their workmen.

2. It reveals from record that, notice issued to the second party at Exh.O-5 returned back with postal remark as "unclaimed". It means inspite service of notice second party failed to appear. The matter is pending for taking steps since long. As second party has never turned up in the Court therefore it appears that he is not interested in proceeding with this case. Hence, I proceed to pass following order.

ORDER

1. Reference is answered in the negative for want of prosecution.

2. Copy of Award be sent to The Deputy Director, Government of India, Ministry of Labour / Shram Mantralaya, New Delhi for appropriate action.

S. S. SAHASRABUDHE, Presiding Officer

Aurangabad

Dated : 10/05/2023

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (संदर्भ **संख्या 07/2013**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. एल-22012/73/2013-आई. आर. (सी.एम-II)

मणिकंदन एन., उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 07/2013)** of the **Central Government Industrial Tribunal-**

cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **13*/09/2023.***

[No. L-22012/73/2013 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Ananda Kumar Mukherjee,

Presiding Officer, Asansol

REFERENCE NO. 07 OF 2013

PARTIES : The Management of Satgram Incline Area of

M/s. ECL

v/s

Sh. Rajuddin Mia

REPRESENTATIVES	**:**	
For the Management	:	Mr. P. K. Das, Learned Advocate
For the Union (Workman)	:	Mr. Rakesh Kumar, President of Koyala Mazdoor Congress
INDUSTRY	:	COAL
STATE	:	WEST BENGAL
Dated	:	09.08.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour and Employment, New Delhi vide its Letter **NO. L-22012/73/2013–IR (CM-II)** dated 08.07.2013 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"*Whether the action of the Management of Satgram Incline to dismiss from service Shri Rajuddin Mia on ex-parte enquiry, is fair and proportionate punishment only on ground of absenteeism. If not so, what relief Management can provide?* **"**

1. On receiving Order **NO. L-22012/73/2013–IR (CM-II)** dated 08.07.2013 from the Govt. of India, Ministry of Labour and Employment, New Delhi for adjudication of the Industrial Dispute, a Reference Case No.**07 of 2013** was registered on 22.07.2013 and an order was passed issuing notice to parties through registered post, directing them to file written statements along with documents and list of witnesses.

2. Mr. Rakesh Kumar, President of Koyala Mazdoor Congress, appeared and filed Written Statement in this case on 09.04.2015. Brief fact of the case is that Rajuddin Mia was a permanent employee at Satgram Incline Colliery, under Satgram Area of Eastern Coalfields Limited, having UM No. 125699 and was posted as UG Loader. The job of UG Loader is risky and hazardous for which he was unable to adjust himself and frequently fell ill. The workman informed the Management of his absence from duty and requested them to allow him to join duty. The Management did not pay heed to his request and issued Charge Sheet against him. After holding Departmental Enquiry the Management of Eastern Coalfields Limited punished him by issuing an Order of Dismissal. According to the workman his absence was not intentional and he submitted an application for his reinstatement in the light of terms agreed by the Management in their Memorandum of Settlement dated 22.05.2007. It is further contended in the Written Statement that Rajuddin Mia has no other source of income for his livelihood. It is averred that the punishment imposed against him for his unintentional and short absence is disproportionate, unjustified and illegal. The workman challenged the Enquiry Proceeding and its findings on the ground that the Enquiry Officer did not consider the circumstances under which Rajuddin Mia absented from his duty and prayed that the aggrieved workman should be reinstated in his duty and paid the back wages.

3. The Management of Eastern Coalfields Limited (hereinafter referred as ECL) contested the Industrial Dispute by filing Written Statement on 23.08.2016 and refuted the contention of the dismissed workman. It is stated in the Written Statement of the company that Management issued Charge Sheet against the delinquent on 13.05.2003 for his unauthorized absence from duty without any information or sanctioned leave. The workman thereby violated clause 26.29 of the Certified Standing Order applicable to the company, that is, "absenting from duty beyond 10 days or without sanctioned leave or suitable cause or overstaying beyond sanctioned leave without reason". The said workman failed to submit any satisfactory reply to the Charge Sheet and a Domestic Enquiry was held. Notice of Enquiry was duly issued to the ex-workman at his home address under registered post but he intentionally avoided to appear or participate in the enquiry. Accordingly, the enquiry was held ex-parte. After conclusion of the enquiry proceeding, the Enquiry Officer submitted his report and the charge of misconduct was duly established. A Second Show Cause Notice was issued to the workman who failed to submit any satisfactory explanation and the Competent Authority after careful consideration of all materials including Charge Sheet, Enquiry Proceeding, Enquiry Report and connected papers, dismissed the workman from service by issuing an order dated 20.07.2004.

The Management claimed that the punishment of dismissal from service imposed against the workman is proportionate to the charge established against him. It is their case that a free and fair enquiry was held against the workman justifying his dismissal as such the dismissed workman is not entitled to any relief claimed by him and the Reference Case is liable to be dismissed.

4. The Schedule of the Reference has laid down two essential points for consideration, which are as follows:-

i. Is the dismissal of Rajuddin Mia on the basis of ex-parte enquiry is fair and a proportionate punishment?

ii. If the procedure and punishment are not found fair, then what relief the dismissed workman is entitled to?

5. Both, the aggrieved workman and the Management of ECL have adduced evidence in support of their respective case. Rajuddin Mia filed his affidavit-in-chief where he stated that initially he could not attend his duty from 16.10.2002 to 29.10.2002 for 13 (Thirteen) days. After recovery from his illness he reported for duty but was not allowed to join. The Management decided to issue Charge Sheet to him on 31.10.2002. In the reply to the Charge Sheet he prayed for allowing him to join duty on the ground that he was undergoing medical treatment at Central Hospital, Kalla. But the Management deliberately did not allow him to join duty. Due to deterioration of his health he went to his native place and the Management again issued Charge Sheet against him bearing Ref. No. S1/MGR/CS/03/650 dated 13.05.2003. It is claimed that the workman submitted his reply to the Charge Sheet informing that he was sick and on the way to his recovery from illness. After his recovery, when he reported for duty he was not allowed to join and was informed that an Enquiry would be held. The workman did not have any information about the date of the enquiry as the Notice of Enquiry was sent to his native place. It is stated in the affidavit-in-chief that the Management of Satgram Incline Areas was predetermined to dismiss him from service and the Enquiry Officer concluded an Ex-parte Enquiry. The Management of the colliery sent a proposal for dismissal of the workman. The General Manager of the Area issued a Second Show cause Notice to Rajuddin Mia and he replied to the same requesting to allow him to join duty and not to dismiss him from service. Rajuddin Mia stated that he submitted the mercy application before the Management of ECL but his appeal was not considered and the Management recommended the proposal for dismissal. The workman deposed that he has no sourced of income to maintain himself and his family as he is out of employment. In his Cross-examination Rajuddin Mia (WW-1) admitted the receipt of the Charge Sheet as he claimed to have replied the same. The witness deposed that his wife was sick and he also fell ill and was treated at Central Hospital at Kalla of ECL. He claimed to have been treated at Deoghar, his native place. The witness deposed that he sent intimation to the Management of his treatment at Deoghar. The witness however, could not produce any document to show that the Management had been informed about his inability to join duty at any point of time. In the first phase of his evidence the witness did not produce any documents relating to his Enquiry Proceedings, Charge Sheet or reply to Second Show cause Notice. On 30.11.2022 Rajuddin Mia (WW-1) was re-examined on recall. Documents produced by him are as follows:

i. Copy of Identity Card of the workman (Exhibit- W-I)

ii. Copy of Charge Sheet dated 31.10.2002 (Exhibit- W-II)

iii. Copy of Second Charge Sheet dated 13.05.2003 (Exhibit- W-III)

iv. Copy of Second Show cause Notice dated 25.03.2004 (Exhibit- W-IV)

v. Copy of Reply submitted by the workman dated 27.05.2004 against Second Show cause Notice (Exhibit- W-V)

vi. Copy of Order of Dismissal dated 20.07.2004 (Exhibit- W-VI)

vii. Copy of Mercy Petition of the workman for reinstatement (Exhibit- W-VIIA, W-VIIB, W-VIIC)

viii. Copy of Letter to the Director Personnel praying for reinstatement (Exhibit- W-VIII)

6. The Management adduced evidence through Mr. Selim Ahmed, Senior Officer Personnel, Satgram Incline colliery, who is examined as MW-1. The witness filed Affidavit-in –Chief. It is stated therein the charged workman was absent from duty in violation of the Standing Order, applicable to the establishment. The concerned workman failed to submit any satisfactory reply. A Domestic Enquiry was held on the basis of the Charge Sheet dated 13.05.2003 and the workman was found guilty of the charge. A Second Show Cause Notice along with Enquiry Proceeding and Enquiry Report were supplied to the workman. The workman submitted reply to his Second Show Cause Notice and the workman was dismissed from the service, which is absolutely justified. In course of his evidence, MW-1 produced the following documents:-

i. Copy of Charge Sheet dated 13.05.2003 (Exhibit- M-1)

ii. Copy of Initial Postal Receipt relating to service of Charge Sheet (Exhibit- M-2)

iii. Copy of Enquiry Proceeding in Seven Pages (Exhibit- M-3)

iv. Copy of Enquiry Report in two pages (Exhibit- M-4)

v. Copy of Second Show Cause Notice dated 25.03.2004 (Exhibit- M-5)

vi. Copy of Letter issued to the workman (Exhibit- M-6)

vii. Copy of earlier Charge Sheet dated 20.03.2002 and 30/31.10.2002 (Exhibit- M-7 and M-8)

viii. Copy of Order of Dismissal dated 20.07.2004 issued by the Agent (Exhibit- M-9)

In course of Cross-examination MW-1 deposed that no enquiry was held in respect of Charge Sheet issued on 31.10.2002 where the allegations were for absenting from duty from 16.10.2002 to 13.05.2003. He further deposed that the workman did not report for duty after the Charge Sheet and the period of absence is more than six months. The evidence of MW-1 has not been controverted on the point of enquiry proceeding being held Ex-parte. No suggestion was put to the witness that the charged employee had no information about the enquiry proceeding being held.

7. Mr. Rakesh Kumar, the Union representative, advancing his argument on behalf of the workman submitted that the workman Rajuddin Mia was absenting himself from duty but no document of medical treatment has been submitted in support of his absence. It is further argued that according to Memorandum of Settlement dated 22.05.2007 it was agreed by the representative of the Management and Union that Management shall reinstate those employees who were dismissed for the reason of absenting duty for a period of nine months and below forty five years of age and such cases could be considered on merit basis. It is argued that the punishment of dismissal imposed on the workman was disproportionate to the charge levelled against him. According to Mr. Kumar, Rajuddin Mia in reply to the Second Show Cause Notice submitted this explanation that he could not attend his normal duty since long due to family disturbance resulting in his illness and he prayed for mercy and a last chance to resume his duty. Referring to his explanation dated 27.05.2004 which has been produced as Exhibit W-V, Mr. Rakesh Kumar argued that the prayer in reply to the Second Show Cause Notice was not considered by the Management and an order of dismissal was issued on 20.07.2004 (Exhibit W-VII). Thereafter several petitions were submitted by the dismissed workman praying for reinstatement. Such applications submitted on 20.05.2010 (Exhibit W-VIIA), dated 11.06.2010 (Exhibit W-VIIB) and dated 30.06.2010 (Exhibit W-VIIC) for reinstatement were not considered. It is urged that the Order of Dismissal issued by the Agent (Exhibit W-VI) is not valid and binding as the Agent is neither the Disciplinary Authority nor the Appointing Authority of the workman. It is claimed that the Order of Dismissal of the workman is liable to be set aside and he is entitled to be reinstated in service and paid his back wages.

8. Mr. P. K. Das, Learned Advocate of ECL, argued that the workman was aware about the issuance of Charge Sheet against him and he admitted the same in the Cross-examination. Learned Advocate submitted that opportunity was given to the workman to participate in the enquiry and notice of enquiry was sent to him. Due to long absence from duty without intimation the charge under Clause 26.29 of the certified Standing Order was proved against him. A Second Show Cause Notice was issued to the workman, which he replied admitting his absence. My attention was drawn to Exhibit- W-V the reply to the second show cause notice which would establish that the workman did not deny the receipt of Charge Sheet against him. According to the Learned Advocate for the Management the Order of Dismissal is not disproportionate to the chronic absence of workman from duty from 16.10.2002 to 13.05.2003. With reference to the order of dismissal (Exhibit-M-9) ld. advocate disagreed that if the Tribunal is of the impression that the order of dismissal is irregular, the matter may be sent back to the lower forum for passing appropriate order afresh.

9. Having considered the facts and circumstances of the dispute involved and the gamut of evidence and having considered the arguments advanced on behalf of the respective parties, it is well established that Rajuddin Mia was a permanent employee of Satgram Incline who remained absent from 16.10.2002 till the date of issuance of Charge

Sheet on 13.05.2003. The charge levelled against him under Clause 26.29 of certified Standing Order. The delinquent in paragraph (8) of affidavit-in-chief admitted that he replied to the Charge Sheet dated 13.05.2003. Knowing fully well that and enquiry proceeding is imminent, he continued to remain absent. The proceeding was held and the Enquiry Officer in his report (Exhibit-M-4) held that the charge levelled against the workman for unauthorized absence was proved beyond doubt. The procedure adopted thereafter in issuing a Second Show Cause Notice calling for his reply within seventy two hours of receipt of letter (Exhibit- M-5) is found consistent with the established principle of natural justice. Rajuddin Mia responded to the Second Show Cause Notice by submitting his reply dated 27.05.2004 but he did nor refute the charge levelled not the Enquiry Proceedings.

10. It is incumbent upon the Disciplinary Authority/ Appointing Authority to issue a Second Show Cause Notice and consider the reply of the charged employee in the light of the Enquiry Report and arrive at an independent decision regarding the quantum of punishment which is deemed most suitable appropriate and justified. In the instant case the closing part of the Enquiry Proceedings appears to have been flawed by passing an order of dismissal by the Agent of the colliery instead of the Competent Authority. There is no whisper in the order that the Agent, Satgram Incline issued the order of dismissal on the direction of General Manager of Satgram Area. Under such view of the matter the Order of Dismissal (Ref. No.ECL/SP/AGENT/LAS-C/PER/DISMISSAL/2004/1665 dated 20.07.2004) (Exhibit-M-9) is not found valid, proper and justified and the same is set aside. The Competent Authority of Satgram Area of ECL shall re-consider the Enquiry Report along with representation submitted by Rajuddin Mia in reply to the Second Show Cause Notice in the light of Memorandum of Settlement dated 22.05.2007 and pass a reasoned order afresh in respect of any punishment which the Management may impose upon the delinquent in view of the gravity of the charge.

11. It is made clear that Rajuddin Mia is not entitled to any back wages for the period he did not render any service to ECL. The General Manager, Satgram Area of ECL, being the Competent Authority, shall pass an appropriate order in respect of the finality of Enquiry Proceeding within one month from the date of notification of the order.

Hence,

ORDERED

The Industrial Dispute is disposed of in the light of my above discussion. The Order of dismissal of Rajuddin Mia vide Ref. No.ECL/SP/AGENT/LAS-C/PER/DISMISSAL/2004/1665 dated 20.07.2004 passed by the agent is set aside. The General Manager, Satgram Area, the Competent Authority, is directed to pass a fresh order in respect of the Enquiry Proceeding against Rajuddin Mia in light of the reply to Second Show Cause Notice and in the light of Memorandum of Settlement dated 22.05.2007 within one month from the date of receipt of Notification of the award. The order shall be communicated to the workman within fifteen days from the date the order passed by the Disciplinary Authority.

Copies of award in duplicate be sent to the Ministry of Labour and Employment, Govt. of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (संदर्भ **संख्या 01/2016**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. एल-22012/94/2015-आई. आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 01/2016)** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **13*/09/2023.***

[No. L-22012/94/2015 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 01 OF 2016

PARTIES: Ganpat Kewat

Vs.

Management of Parbelia Colliery of ECL

REPRESENTATIVES:

For the Union/Workman : Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL : Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 31.08.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/94/2015-IR(CM-II)** dated 23.12.2015 has been pleased to refer the following dispute between the employer, that is the Management of Parbelia Colliery under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the management of Parbelia Colliery under Sodepur Area of M/s. ECL in denying to process the mercy petition for reinstatement of Shri Ganpat Kewat, U.G. Loader when he is fulfilling all the eligibility criteria as per Memorandum of Settlement dated 22.05.2007 is legal and or justified? If not, what relief the ex-workman concerned is entitled to?* **"**

1. On receiving Order **No. L-22012/94/2015-IR(CM-II)** dated 23.12.2015 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 01 of 2016** was registered on 08.01.2016 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents and a list of witnesses.

2. The aggrieved workman filed his written statement on 16.03.2016 stating therein that he was posted as an Underground Loader at Parbelia Colliery under Sodepur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). It is stated that the work of an Underground Loaer is very risky, hard and hazardous, due to which the workman was unable to adjust himself and frequently fell ill. He remained absent from duty from 19.02.2001 to 01.08.2001, for a period of five months fourteen days and the management was informed about his absence but he was not allowed to join his duty and thereafter a Charge Sheet was issued to him. An Enquiry Proceeding was initiated on the charge of unauthorized absence from duty. The management held him guilty of charges and dismissed him from service. The contention of the dismissed workman is that the punishment imposed against him is disproportionate to the charge levelled against him. Furthermore, a Memorandum of Settlement dated 22.05.2007 was reached between the management and the representative of the workman, wherein it was agreed that the workman who absented from duty up to nine months and was below forty-five years of age would be considered for service on the merit of each case. The application submitted by the dismissed workman for his reinstatement was not considered, for which he raised an Industrial Dispute challenging the proceeding of enquiry and his dismissal. It is prayed that he should be allowed to join his service and be paid full back wages with other consequential benefits.

3. The management of ECL contested the case by filing written statement on 26.05.2016. It has been admitted that Ganpat Kewat was an employee of ECL at Parbelia Colliery, having U.M. No. 125800. Due to his unauthorized absence from duty w.e.f. 19.02.2001 to 01.08.2001, a Domestic Enquiry was conducted against Ganpat Kewat and notice of enquiry was issued to him at his home address but the workman did not participate in the enquiry. The charge framed against the workman was proved and a Second Show Cause Notice was issued by the Disciplinary Authority following natural justice. As the charge was proved against the workman, he was dismissed from service

vide Letter of Dismissal No. PARB-AO/PERS/C-6/03/1695 dated 05/06.06.2003. Further case of the management is that the concerned workman was entitled to file an application before the Appellate Authority within forty-five days of imposing the punishment but in the instant case he did not file any appeal. On the other hand he raised an Industrial Dispute after more than ten years of his dismissal which manifest his disinterest in work. Though the workman claimed that he was absent from duty due to illness he has not adduced any evidence in support of his illness nor did he attend any Hospital or Dispensary of the company in relation to his medical treatment. It is urged that reinstating such a person in service would be a misplaced sympathy and would compromise the discipline of the industry. The management therefore prayed for dismissal of the Industrial Dispute raised by the workman.

4. In support of his case Ganpat Kewat filed an affidavit-in-chief reiterating his case in the written statement. In course of evidence he has produced the following documents :

(i) Photocopy of the Charge Sheet dated 02.08.2001 as Exhibit W-1.

(ii) Photocopy of the Letter of Dismissal dated 05/06.06.2003 as Exhibit W-2.

(iii) Photocopy of the Mercy Petition for reinstatement addressed to the Director (Personnel), ECL, Sanctoria as Exhibit W-3.

(iv) Photocopy of the same Mercy Petition for reinstatement addressed to the General Manager of Sodepur Area as Exhibit W-4.

During cross-examination workman witness -1 deposed that he could not file any document to show that he informed the colliery management about his illness since 19.02.2001. He was unable to produce the doctor who medically treated him. The workman admitted that he received the Charge Sheet and Notice of enquiry at his native place. It is evident from his statement that he was reluctant to do his job as nature of work was difficult.

5. Mr. Chinmoy Senapati, Deputy Manager (Personnel) at Parbelia Group of Mines under Sodepur Area of ECL has been examined as Management witness-1. He has filed affidavit-in-chief in support of the management's case stating therein that Charge Sheet dated 02.08.2001 under Section 26.29 of the Certified Standing Orders was issued against the workman for his unauthorized absence from duty from 19.02.2001 to 02.08.2001. He also stated that the workman did not submit any reply to the Charge Sheet for which a Departmental Enquiry was held and an Enquiry Officer was appointed by the Supdt/Manager, Parbelia Colliery of ECL. Notice of enquiry was duly sent to the home address of the workman but he did not attend the Enquiry Proceeding. It has been further averred that the Enquiry Proceeding was held ex-parte and the charge of misconduct was proved against the workman. The Note Sheet proposing dismissal of Ganpat Kewat was approved by the General Manager of Sodepur Area and the Agent of Parbelia Colliery issued a letter of dismissal dated 05/06.06.2003. Several documents have been produced on behalf of the management of ECL which are as follows :

(i) Photocopy of the Charge Sheet dated 02.08.2001 is marked as Exhibit M-1.

(ii) Photocopy of the Letter dated 08.08.2001 appointing the Enquiry Officer is produced as Exhibit M-2.

(iii) Photocopy of the Notice of enquiry issued to Ganpat Kewat informing him about the Enquiry Proceeding as Exhibit M-3 and M-3/A, M-3/B, and M-3/C. It was deposed by the MW-1 that Notices were sent the workman under registered post at his home address at Bilaspur.

(iv) Photocopy of the Enquiry Proceeding and Findings of the Enquiry Officer, in twelve pages collectively marked as Exhibit M-4.

(v) Photocopy of the Second Show Cause Notice dated 25/26.03.2002 issued to the workman is produced as Exhibit M-5.

(vi) Photocopy of the Note Sheet in three pages collectively marked as Exhibit M-6.

(vii) Photocopy of the Letter of Dismissal issued by the Agent of Parbelia Group dated 05/06.06.2023 is produced as Exhibit M-7.

During cross-examination Management Witness -1 deposed that the Charge Sheet issued to the workman at his home address was not returned but he was unable to produce the document to show that the Notice of enquiry were sent to the workman under registered post. The witness admitted that a Mercy Petition was filed by the workman for his reinstatement in service eleven years after his dismissal and that the Mercy Petition was sent to the Head Office but the same was returned as it was not submitted within forty-five days, which is the time limit for appeal in the Certified Standing Orders of the company. The witness further stated that the workman was dismissed from service by the Agent on recommendation of the General Manager. Witness denied the suggestion that the punishment was disproportionate to the charge.

6. The stage is now set to consider whether denying reinstatement of Ganpat Kewat in his service under ECL on the basis of his Mercy Petition is legal and justified and what relief the ex-workman is entitled to. In a way the workman has challenged the sanctity and propriety of the enquiry proceeding resulting in his dismissal.

7. Mr. Rakesh Kumar, Union representative on behalf of the dismissed workman argued that Enquiry Proceeding was conducted ex-parte without service of Charge Sheet and Notice of enquiry upon the workman. The entire proceeding was conducted behind the workman, holding him guilty of charge under Section 26.29 of the Certified Standing Orders of the company. It is argued that no Second Show Cause Notice was served upon the workman and copy of Enquiry Proceeding was not supplied to him for his response in respect of the Enquiry Proceeding. It is urged that the workman was arbitrarily and illegally dismissed from service by the Agent of Parbelia Group, who is neither the Disciplinary Authority or the Appointing Authority of the workman. Mr. Kumar further argued that the punishment of dismissal without giving opportunity to the workman to respond to the findings of the Enquiry Proceeding is a clear violation of natural justice and the order of dismissal is liable to be set aside. Drawing my attention to the Point No. 7 of the Memorandum of Settlement dated 22.05.2007 it is submitted that the management had agreed to reinstate the employees who were dismissed from service for the reason of absence for a period of nine months and where their age was below forty-five years, considering the case on merit.

8. In reply Mr. P. K. Das, learned advocate for the Management of ECL argued that Charge Sheet and Notice of enquiry were served upon the workman, who has admitted receipt of the same but the workman did not participate in the Enquiry Proceeding and was found guilty of the charge. Learned advocate produced the Enquiry Proceeding and Findings of the Enquiry Officer in twelve pages, which has been collectively marked as Exhibit M-4. It is demonstrated through Exhibit M-5 that a Second Show Cause Notice dated 25/26.03.2002 was issued to Ganpat Kewat, calling upon him for his explanation regarding the charge of unauthorized absence proved against him. Learned advocate submitted that a letter of dismissal dated 05/06.06.2003 was issued by the Agent of Parbelia Group (Exhibit M-7) after the proposal for dismissal was approved by the General Manager of Sodepur Area in the Note Sheet on 30.05.2003 (Exhibit M-6, collectively in three pages). Learned advocate for the management urged that the Industrial Dispute is liable to be set aside.

9. I have considered the facts involved, the evidence adduced and the arguments adduced. It may be derived from the admitted position that Ganpat Kewat absented form duty from 19.02.2001 until Charge Sheet was issued to him on 02.08.2001. He did not participate in the Enquiry Proceeding and was found guilty and dismissed from service. In the written statement the workman stated that he was unable to adjust himself to the hazardous and risky work of an Underground Loader and frequently fell ill. No document could be produced by the workman in support of his illness. In Paragraph – (3) of the affidavit-in-chief the workman admitted that he received the Charge Sheet dated 02.08.2001 and submitted a reply. The reply to the Charge Sheet has not been produced by the workman. He further claimed that while he was posted at the colliery, notice of enquiry was sent to his home address and he did not know the date of enquiry for which he had no knowledge about the enquiry. In course of his cross-examination the witness admitted that he received copy of Charge Sheet and Notice of enquiry at his native place. Therefore, it cannot be denied that opportunity was given to the workman to participate in the enquiry but he has voluntarily preferred to keep himself away after four Notices of enquiry. Copy of the Enquiry Proceeding and Findings of the Enquiry Officer have been produced as Exhibit M-4. On a perusal of the report of the Enquiry Proceeding I find that the Enquiry Proceeding continued from 24.09.2001 to 25.02.2002. A Second Show Cause Notice dated 25/26.03.2002 (Exhibit M-5) addressed to Ganpat Kewat was sent under registered post at his home address at Bilaspur. The management witness has deposed that Second Show Cause Notice was issued to the workman and no reply was submitted by the workman against the Second Show Cause Notice. In course of cross-examination the management witness deposed that he cannot produce the postal receipt regarding transmission of the Second Show Cause Notice. Therefore, an adverse presumption is drawn against the management of ECL that the Second Show Cause Notice was not served upon the workman before passing of Order of Dismissal and no reasonable opportunity was provided to the delinquent to respond to the ex-parte finding of the Enquiry Officer. The Second Show Cause Notice dated 25/26.03.2002 (Exhibit M-5) appear to have been issued after initiating the Note sheet (Exhibit M-6) on 05.03.2002 for dismissal of the workman. Therefore, it is evident that no importance was attached to the Second Show Cause Notice and no reply to such notice was entertained before passing of the order of dismissal.

10. In this context it would be apposite to refer to the decision of the Hon'ble Supreme Court of India in the case of **Pawan Kumar Agrawala vs General Manager-II and Appointing Authority, State Bank of India and Others [(2016) 148 FLR 865]**, wherein it was held that :

" *if copies of documents and list of witnesses was not furnished to the workman during inquiry, the inquiry was vitiated on account of non-compliance of statutory rules and violation of the principles of natural justice.* **"**

11. It would be pertinent to place reliance on the observation of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471],** wherein the Hon'ble Supreme Court of India laid down the law as follows:

"When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice."

12. In the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakaran [1993 (3) SLR 532 (SC)]**, the Hon'ble Supreme Court of India on further examination laid down the following guidelines and direction :

"It is evident where the Inquiry Officer is other than the Disciplinary Authority, the disciplinary proceeding break into two stages. The first stage when the Disciplinary Authority arrives at its conclusion on the basis of evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty on the basis of its conclusion. If the Disciplinary Authority decides to drop the proceeding, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of inquiry. If he right is denied to him, he is in effect denied the right to prove his innocence in the disciplinary proceeding."

13. In this context Coal India Limited (hereinafter referred to as CIL) issued a Circular bearing No. CIL C-5A(VI)/50774/28 dated 12.05.1994, wherein referring to the aforesaid decisions of the Hon'ble Supreme Court of India the Director (P&IR), CIL clearly indicated that the law laid down in Mohd. Ramzan Ali's case would operate prospectively to the orders of punishment passed after 20th November, 1990. The Enquiry Report should be supplied to the charged employee and while communicating the final order it must be mentioned that the representation of the employee was taken into consideration by the Disciplinary Authority.

14. In view of the binding nature of the above referred decisions of the Hon'ble Supreme Court and the Circular issued by CIL on 12.05.1994 it is absolutely necessary that the delinquent employee is served with copy of Enquiry Proceeding and Second Show Cause Notice regarding the charge established against him and thereafter on considering his representation, if any, imposed the punishment against him. In the instant case the Enquiry Officer and Disciplinary Authority are different persons. The workman ought to have been provided with an opportunity to make his representation before imposing a harsh punishment of dismissal against him. The mandates of the Hon'ble Supreme Court of India have not been followed in the present case, thereby the second part of the proceeding leading to dismissal of the employee has been vitiated. When the Enquiry Proceeding is itself vitiated for want of mandatory compliance it is immaterial whether any representation or appeal has been preferred by the workman within forty-five days from the date of dismissal of the workman according to the Certified Standing Order of the company specially when there is no limitation in raising the Industrial Dispute.

15. Under the foregoing facts and circumstances and the guiding principles set out in the above decisions, I find and hold that the Letter of dismissal of Ganpat Kewat dated 05/06.06.2003 issued by the Agent, Parbelia Group of ECL on approval of the General Manager, Sodepur Area, ECL is arbitrary, improper, unjust and violative of natural justice and the same is hereby set aside.

16. The General Manager of Sodepur Area of ECL is directed to serve a Second Show Cause Notice to Ganpat Kewat and supply him with copy of Enquiry Proceeding with Findings within one month from the receipt of the Notification of the Award, calling upon him to submit his response / reply within fifteen (15) days and after considering the same, along with other relevant materials pass a fresh order which shall be communicated to the workman within fifteen (15) days from the date of Order. The entire exercise shall be completed within two (2) months after receipt of the Notification of the Award. The Industrial Dispute is accordingly allowed in favour of the workman.

Hence,

ORDERED

that the order of dismissal of Ganpat Kewat communicated by the Agent, Parbelia Group of ECL in his letter dated 05/06.06.2003 on approval of the General Manager of Sodepur Area of ECL is bad in law and hereby set aside. The General Manager shall issue a Second Show Cause Notice to Ganpat Kewat and supply copy of Enquiry Proceeding to him with Findings, seeking his response / reply and after considering all materials and reply submitted by the workman, shall pass a fresh Order in respect of the finality of Departmental Proceeding. The Order shall be communicated to the workman within fifteen days. The question of reinstatement is to be decided accordingly thus the Industrial Dispute is allowed in favour of Ganpat Kewat and against the management of ECL on contest. Let an award be drawn up in the light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (संदर्भ **संख्या 38/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. एल-22012/98/2018-आई. आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 38/2018)** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **13*/09/2023***

[No. L-22012/98/2018 – IR (CM-II)]

MANIKANDAN N., Dy Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 38 OF 2018

PARTIES: Prasenjit Ruidas

Vs.

Management of Naba Kajora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.08.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/98/2018-IR(CM-II)** dated 13.11.2018 has been pleased to refer the following dispute between the employer, that is the Management of Naba Kajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the management of Naba Kajora Colliery of Eastern Coalfields Ltd in not providing employment on compassionate ground to Sri Prasenjit Ruidas, S/o Lt. Nabin Ruidas in spite of repeatedly representations from 2/2/1999 to 29/4/2011 is justified. If not, to what relief Sri Prasenjit Ruidas dependent son of Lt. Nabin Ruidas, Ex-Employee is entitled? "

1. On receiving Order **No. L-22012/98/2018-IR(CM-II)** dated 13.11.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 38 of 2018** was registered on

03.12.2018 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Rakesh Kumar, President of Koyala Mazdoor Congress filed a written statement on 19.09.2022 on behalf of Prasenjit Ruidas, son of Late Nabin Ruidas. The fact of the partitioner's case canvassed in the written statement is that Late Nabin Ruidas was an Underground Loader and a permanent employee at Naba Kajora Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) having U.M. No. 249834. Nabin Ruidas died in harness on 29.01.1999 and according to the provisions of National Coal Wage Agreement (hereinafter referred to as NCWA) one dependent of the deceased employee is entitled to get employment. Initially Late Smt. Chaina Ruidas, the widow of Late Nabin Ruidas applied for providing employment in place of her husband and submitted application along with documents. The management started processing the claim for employment and she was asked to appear before the Screening Committee of the company. Her proposal for employment was then forwarded to Area Office. Smt. Chaina Ruidas died on 15.02.2000 leaving behind two minor sons. After the death of the wife of Late Nabin Ruidas, Prasenjit Ruidas, the dependent son applied for providing employment to him. He submitted necessary document in support of his claim but no employment was provided to him. The dependent son was not referred for his medical examination before the Initial Medical Examination (hereinafter referred to as IME) Board and no communication was made by the employer regarding his claim for employment. It is contended in the written statement that the dependent son has no source of income for his livelihood. Further case of the workmen's union is that just after the death of Nabin Ruidas his wife claimed for employment and on her death the son claimed for his employment which is a continuation of the claim. It is argued that the dependent son of the Late Nabin Ruidas should be provided with employment without further delay.

3. Management of ECL has contested the case by filing written statement on 19.09.2022. It is admitted that Late Nabin Ruidas was a permanent employee at Naba Kajora Colliery having U.M. No. 249834. After his death on 29.01.1999 his wife Late Smt. Chaina Ruidas applied for compassionate appointment which was processed and sent to the Area vide letter no. ECL/NKC/WO/99/Empl/179 dated 7.07.1999. Smt. Chaina Ruidas expired on 15.02.2000 leaving behind two sons namely Prasenjit Ruidas whose date of birth is 24.09.1990 and Chiranjit Ruidas whose date of birth is 04.06.1993. Accordingly, Prasenjit Ruidas was eight years and four months and five days at the time of death of his father. The Management of ECL has asserted that as per NCWA-V, applicable to this case, in Clause 9.5.0 (iii) it is provided as follows :

"In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependent is on live roster, the female dependent will be paid monetary compensation as per rates at paras (i) & (ii) above."

And according to NCWA-VI, Clause 9.5.0 (iii) applicable during the period from 01.07.1996 to 30.06.2001 it is laid down that :

"In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependent is on live roster, the female dependent will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000."

The management of ECL has asserted that their action is just and proper as such the dispute raised by the union is misconceived and has no merit for being considered.

4. Prasenjit Ruidas has filed his affidavit-in-chief reiterating the facts sated in the written statement and examined himself as the workman witness – 1. Several documents have been produced by the dependent of the workman which are as follows :

(i) Photocopy of the Identity Card of Nabin Ruidas as Exhibit W-1.

(ii) Photocopy of Service Record Excerpt of Nabin Ruidas as Exhibit W-2.

(iii) Photocopy of the Death Certificate of Nabin Ruidas as Exhibit W-3.

(iv) Photocopy of the Death Certificate of Smt. Chaina Ruidas as Exhibit W-4.

(v) Photocopy of the Application submitted by Smt. Chaina Ruidas seeking employment as Exhibit W-5.

(vi) Photocopy of the Application dated 24.03.2000 submitted by Prasenjit Ruidas regarding death of Smt. Chaina Ruidas as Exhibit W-6.

(vii) Copy of the Application dated 25.08.2001 submitted by Prasenjit Ruidas seeking employment as Exhibit W-7.

(viii) Copy of the Application dated 26.03.2003 submitted by Prasenjit Ruidas regarding delay in providing employment as Exhibit W-8.

(ix) Photocopy of the Letter dated 22.04.2003 requesting for processing the employment proposal as Exhibit W-9.

(x) Photocopy of the Reasoned Order dated 14.08.2012 passed by the General Manager of Satgram Area for providing employment to Yoginder Singh in compliance with direction to the respondent in Writ Petition No. 1202(W) of 2010 as Exhibit W-10.

5. Mr. Ramjee Tripathi, management witness has filed affidavit-in-chief and adduced evidence as Management Witness-1. In course of evidence he has produced the following documents :

(i) Photocopy of the Service Record Excerpt of Nabin Ruidas in two pages collectively marked as Exhibit M-1.

(ii) Photocopy of the Letter dated 02.02.1999 of Smt. Chaina Ruidas informing death of her husband as Exhibit M-2.

(iii) Photocopy of the Death Certificate of Nabin Ruidas as Exhibit M-3.

(iv) Photocopy of the Order dated 10.12.1994 issued by Senior Personnel Officer, Naba Kajora Colliery for inclusion of the name of dependents ofNabin Ruidas as Exhibit M-4.

(v) Photocopy of the Application of Smt. Chaina Ruidas for employment before Naba Kajora Colliery as a dependent of her husband as Exhibit M-5.

(vi) Photocopy of the Application dated 24.03.2000 submitted by Prasenjit Ruidas regarding death of Smt. Chaina Ruidas as Exhibit M-6.

(vii) Photocopy of the Death Certificate of Smt. Chaina Ruidas as Exhibit M-7.

(viii) Copy of the Application of Prasenjit Ruidas dated 25.08.2001, claiming employment as a dependent of Nabin Ruidas as Exhibit M-8.

(ix) Copy of the Registration Certificate of Prasenjit Ruidas issued by the West Bengal Board of Secondary Education bearing his date of birth as 24.09.1990 as Exhibit M-9.

6. The moot point for consideration is whether Prasenjit Ruidas is entitled for compassionate appointment under ECL on account of death of his father in harness.

7. Mr. Rakesh Kumar, Union representative on behalf of the dependent of the ex-workman argued that Late Nabin Ruidas was a permanent employee of Naba Kajora Colliery under Kajora Area of ECL having U.M. No. 249834 died in harness on 29.01.1999. After his death Late Smt. Chaina Ruidas, his widow applied for her employment as a dependent but she expired on 15.02.2000 leaving behind the present petitioner as one of the legal heirs. Prasenjit Ruidas submitted his application on 24.03.2000 (Exhibit W-6) informing about his mother's death and also claimed employment as a dependent son of Late Nabin Ruidas. Subsequently, he filed application dated 25.08.2001 (Exhibit W-7), a reminder dated 26.03.2003 (Exhibit W-8) and an application dated 22.04.2003 (Exhibit W-9) praying for employment but the management did not provide any employment to the dependent in accordance with the provisions of Clause 9.5.0 of NCWA-V.

8. In reply Mr. P. K. Das, learned advocate for the Management argued that compassionate appointment is an exception to the rule of regular appointment. It is argued that the appointment in Public Service and Public Sector Undertaking should be made strictly on the basis of open invitation of application and competition, proving equal opportunity to the contenders. In case of compassionate appointment, the rule governing such appointment shall have to be strictly followed and no concession can be made thereof. Learned advocate for the management argued that at the time of death of Nabin Ruidas the age of the petitioner was eight years four months and five days therefore, he could not have been accommodated in the live roster for providing employment on his attaining the age of eighteen years. Learned advocate for ECL drew my attention to the provision of Clause 9.5.0 (iii) of NCWA-V which was made applicable since 01.07.1991 to 30.06.1996 and submitted that since the petitioner was far below fifteen years of age at the time of death of his father he was not entitled to be included in live roster for consideration.

9. Referring to the Clause 9.5.0 (iii) of NCWA-VI which was in operation from 01.07.1996 to 30.06.2001, it is submitted that the lower age limit in Clause 9.5.0 was brought down to twelve years for a dependent to be included in the live roster for the purpose of providing compassionate employment commensurate to his skills and qualification when he attains the age of eighteen years. It is further submitted that the Registration Certificate of Prasenjit Ruidas issued by the West Bengal Board of Secondary Education (Exhibit M-9) disclosed his date of birth as 24.09.1990. Therefore, it is beyond the scope for management of ECL for providing employment to the dependent son who did not fulfill the provisions of NCWA.

10. I have considered the rival contentions of the management of ECL and dependent of the ex-employee. Admittedly, Late Nabin Ruidas, the father of Prasenjit Ruidas was a permanent employee of ECL who died in harness on 29.01.1999 while working at Naba Kajora Colliery under Kajora Area of ECL. The names of Smt. Chaina Ruidas, Prasenjit Ruidas, and Chiranjit Ruidas were entered in the Service Record of Late Nabin Ruidas vide Order dated 10.12.1994 issued by Senior Personnel Officer, Naba Kajora Colliery of ECL (Exhibit M-4). The date of birth of Prasenjit Ruidas was recorded as 24.09.1990 and the same finds support from the Registration Certificate of Prasenjit Ruidas issued by the West Bengal Board of Secondary Education (Exhibit M-9) filed by the management. Therefore, I have no qualm to accept that Prasenjit Ruidas did not attain the eligible age of fifteen years for being included in the live roster of the company according to the Clause 9.5.0 of NCWA-V. The petitioner son of the deceased employee is presently thirty-three years of age. As a legal heir of his deceased father the management of ECL should disburse all the death benefits in favour of the petitioner Prasenjit Ruidas and his brother Chiranjit Ruidas according to their respective share in the estate of the deceased. Since the provisions of NCWA is silent regarding payment of monetary compensation to the dependent other than female dependent of the deceased employee, I am unable to extend such relief to the petitioner.

11. In such view of the matter there is no scope for entertaining the claim for compassionate appointment of Prasenjit Ruidas as a dependent of Late Nabin Ruidas under ECL. The Industrial Dispute is accordingly dismissed on contest.

Hence,

ORDERED

that Prasenjit Ruidas is not entitled for compassionate appointment as a dependent of Late Nabin Ruidas under the Scheme laid down in the NCWA. The Industrial Dispute is dismissed on contest. An Award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2023

का.आ. 1598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल के पंचाट (संदर्भ **संख्या 20/2021**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **13/09/2023** को प्राप्त हुआ था।

[सं. एल-22012/49/2021-आई. आर. (सी.एम-II)]

मणिकंदन एन., उप निदेशक

New Delhi, the 27th September, 2023

S.O. 1598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 20/2021*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **13*/09/2023.***

[No. L-22012/49/2021 – IR (CM-II)]

MANIKANDAN N., Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,

Presiding Officer,

C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 20 OF 2021

PARTIES: Rabi Majhi

Vs.

Management of Chapui Khas Colliery of ECL

REPRESENTATIVES:

For the Union/Workman : Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL : Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 31.08.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/49/2021-IR(CM-II)** dated 21.10.2021 has been pleased to refer the following dispute between the employer, that is the Management of Chapui Khas Colliery under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the Management Chapuikhas Colliery under Satgram Area of M/s. Eastern Coalfields Ltd. in denying employment to Shri Rabi Majhi, dependent son of Late Hopna Majhi, Ex SF Trammer, UM No. 396335, Chapuikhas Colliery, is just and legal? If not, to what relief Shri Rabi Majhi is entitled? "

1. On receiving Order **No. L-22012/49/2021-IR(CM-II)** dated 21.10.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 20 of 2021** was registered on 29.10.2021 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Rakesh Kumar, Union representative filed written statement on behalf of Rabi Majhi, dependent son of Late Hopna Majhi on 23.12.2022. It is the case of Rabi Majhi that his father Late Hopna Majhi, ex-Surface Trammer with U.M. No. 396335 was employed at Chapui Khas Colliery under Satgram Area of Eastern Coalfields Limited (hereinafter referred to as ECL). Hopna Majhi died on 01.06.1997 while he was in service of the company. It is claimed that as per provisions of National Coal Wage Agreement (hereinafter referred to as NCWA) one dependent of the deceased employee is entitled to get employment on compassionate ground. After the death of Hopna Majhi his wife Smt. Budhni Mejhain applied for employment and submitted relevant documents before the management. Smt. Budhni Mejhain also applied for payment of legal dues to her in respect of CMPF, Gratuity of her late husband. After examining the employment proposal of the wife of Late Hopna Majhi the management of the company discouraged the employment of female dependent on the pretext that Late Hopna Majhi had a son. The wife of Late Hopna Majhi was advised to claim employment for her son. He was referred to the Area Medical Officer for verifying his eligibility for employment under the provisions of Clause 9.5.0 of NCWA. During Initial Medical Examination (hereinafter referred to as IME) the age of Rabi Majhi was assessed between seventeen to twenty-two years on 22.04.2000, which means he was nineteen years and six months old on 22.04.2000 and on the date of death of his father he was fifteen years of age and he was entitled to get employment under Clause 9.5.0 of NCWA but the management did not include his name in Live Roster of the company.

3. According to the provisions of Clause 9.5.0 of NCWA if a dependent son is below the age of eighteen years on the date of death of the employee, his name is required to be maintained in the Live Roster of the company and the wife / female dependent of deceased employee is eligible to get monetary compensation as per prescribe rates from time to time.

4. The management of the company processed the employment proposal of Rabi Majhi and had sent it to ECL headquarters with the recommendation of the Screening Committee and the General Manager of the Area but the proposal for employment was regretted by the ECL headquarters and communicated to the dependent on 30.07.2001. Rabi Majhi again applied for his employment before the management of ECL. A Memorandum of Settlement was drawn up before the Regional Labour Commissioner (Central), Asansol on 22.05.2007, where it was agreed that all old claims for employment would be examined and considered. However, the management did not provide employment to Rabi Majhi till date. It is asserted that Rabi Majhi, son of Late Hopna Majhi does not have any source of income to maintain his livelihood and family of Late Hopna Majhi is faced with hardship. It is contended that Rabi Majhi is entitled to get employment in place of his deceased father and the wife of Late Hopna Majhi is entitled to monetary compensation under Clause 9.5.0 of NCWA.

5. The management of ECL has contested the case by filing written statement on 23.12.2022. The counter case of the management is that Late Hopna Majhi, ex-Surface Trammer bearing U.M. No. 396335 was employed at Chapui Khas Colliery of ECL and died on 01.06.1997 in harness. After death of Late Hopna Majhi his wife Smt. Budhni Mejhain claimed for an employment against the death of her husband according to the provisions of NCWA. After verification of the claim the employment proposal was returned from the Area Office as the ex-employee has suitable dependent for employment. Rabi Majhi was sent to the Area Medical Officer of Satgram Area for his medical examination as well as age assessment. After Initial Medical Examination (hereinafter referred to as IME) Rabi Majhi was found fit for underground job and his age was assessed as 17 to 22 years i.e. nineteen years and six months on 22.04.2000. The employment proposal of Rabi Majhi was forwarded to the Area Office for further necessary action. Vide letter no. ECL/RTB/PER/2001/2673 dated 30.07.2001 the Dy.CME / Agent of Ratibati (R) Mines communicated Rabi Majhi that his claim for employment was regretted due to delay. On the request of union representative another employment proposal in respect of Rabi Majhi was forwarded to ECL headquarters. Some documents and certain clarifications on few points were asked from Rabi Majhi. After submission of necessary documents, no communication has been received from ECL headquarters about employment of Rabi Majhi. For such reasons the Industrial Dispute raised, claiming employment for the dependent son of the deceased employee is liable to be dismissed.

6. Rabi Majhi filed an affidavit-in-chief and examined himself as workman witness No. 1. In his affidavit-in-chief the deponent stated that his father died on 01.06.1997 while he was in service of the company and his mother Smt. Budhni Mejhain applied for providing employment to her as a dependent. The management of the colliery had processed the proposal and sent it to the Area Office. The management of the company declined to offer her with employment on the ground that the workman has a dependent son and advised her to apply for employment of the son. The witness stated that he submitted his application for employment and the IME Board declared him fit for duty and assed his age as nineteen years and six months on 22.04.2000. The Area Office management returned the proposal for his employment on 30.07.2001 on the ground that such claim cannot be entertained as there was some delay on his part. The dependent of the deceased employee submitted an application for reconsideration of his prayer for employment but till date ECL headquarters have neither provided employment nor regretted the proposal. In course of his examination workman witness – 1 has produced the following documents :

(i) Photocopy of the letter dated 09.09.2008 issued by the Manager of Chapui Khas Colliery for fresh Pre-employment Medical Examination as Exhibit W-1.

(ii) Photocopy of the letter dated 18.10.2008 issued by the Dy. CME / Agent of Ratibati (R) Colliery furnishing para-wise reply on employment proposal of Rabi Majhi on 14.12.1998 where it was also pointed out that neither employment was offered nor monetary compensation was provided to anyone in place of Late Hopna Majhi till then. It was further stated that on Denovo Screening by the Dy. PM, Chapui Khas Colliery it had been found that relationship of Rabi Majhi with Late Hopna Majhi is genuine and he is the son of the deceased employee. The document has been marked as Exhibit W-2.

(iii) Photocopy of the letter dated 04.02.2009 whereby, Rabi Majhi was directed to appear before the Area Medical Officer of Satgram Area Hospital for his medical examination. The document has been marked as Exhibit W-3.

(iv) Photocopy of the Death Certificate of Hopna Majhi has been admitted in the evidence as Exhibit W-4.

7. At the instance of the representative of the workmen four documents were produced during cross-examination of the management witness :

(v) Photocopy of the Service Excerpt of Late Hopna Majhi in two pages has been collectively marked as Exhibit W-5.

(vi) Photocopy of the letter dated 08.05.2002 issued by Dy. CME/ Agent Ratibati (R) Colliery addressed to Rabi Majhi asking him to appear before the Personnel Manager, Satgram Area Office along with all the relevant documents has been marked as Exhibit W-6.

(vii) Photocopy of the letter dated 09.09.2008 issued by the Manager of Chapui Khas Colliery for fresh Pre-Medical Examination of Rabi Majhi has been marked as Exhibit W-7.

(viii) Photocopy of the letter dated 04.02.2009 asking Rabi Majhi to appear before the Area Medical Officer of Satgram Area Hospital for his medical examination has been marked as Exhibit W-8.

8. Mr. Kalyan Roy, Deputy Manager (Personnel) of Ratibati Group of Mines has filed affidavit-in-chief and adduced evidence in this case for the management. It has been deposed by him that after the death of Hopna Majhi on 01.06.1997 his wife Smt. Budhni Mejhain was not provided with any employment. Rabi Majhi's prayer for employment was regretted as his claim was made after a lapse of more than six months. In course of his examination management witness – 1 has filed the following documents :

(i) Photocopy of the letter dated 31.07.2001 addressed to Rabi Majhi communicating the inability of management to process his case due to delay is marked as Exhibit M-1.

(ii) Photocopy of the No Objection Certificate issued in favour of Smt. Budhni Mejhain, the wife of Late Hopna Majhi by the other legal heirs as Exhibit M-2.

(iii) Photocopy of the letter dated 18.10.2008 issued by the Dy. CME / Agent Ratibati (R) Colliery regarding revival of proposal for employment of Rabi Majhi as Exhibit M-3 (same as Exhibit W-2).

9. The issue which stood for consideration and adjudication is whether the claim for employment of Rabi Majhi as a dependent son of Late Hopna Majhi is justified and the decision of the management of ECL in denying employment to Rabi Majhi is proper and tenable.

10. Admittedly, Late Hopna Majhi was a permanent employee of ECL and he died in harness on 01.06.1997, leaving behind other legal heirs whose particulars can be gathered from the Service Excerpt (Exhibit W-5). Late Hopna Majhi left behind Smt. Budhni Mejhain, his wife, Rabi Majhi and Mongla Majhi his two sons, Kumari Lakhi Mejhain, his daughter, Chhotu Majhi, his father and Smt. Dashoni Mejhain, his mother. It appears from his Service Excerpt that his date of birth was 09.09.1952 and he died on 01.06.1997 at the age of forty-five years. Accordingly, NCWA-VI will be applicable to the concerned workman and his dependent.

11. Clause 9.3.2 of NCWA-VI provides as follows :

***"** Employment to one dependent of the worker who dies while in service.*

*In so far as female dependants are concerned, their employment / payment of monetary compensation would be governed by para 9.5.0**"***

Clause 9.3.3 of NCWA-VI laid down as follows :

"** the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother widowed daughter / widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependant of the deceased.**"

Clause 9.3.4 of NCWA-VI provides that :

"** the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment.**"

Clause 9.5.0 (ii) of NCWA-VI provides that :

***"** In case of death /total permanent disablement due to cause other than mine accident and medical unfitness under Clause 9.4.0., if the female dependent is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3000/- per month or employment.*

*In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment**"***

Clause 9.5.0 (iii) of NCWA-VI provides that :

"** In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above. This will be effective from 1.1.2000.**"

Clause 9.5.0 (iv) of NCWA-VI provides that :

"** Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.**"

12. After the death of Hopna Majhi his wife Smt. Budhni Mejhain had applied for her employment as a dependent. In the written statement filed by the management of ECL it has been admitted in Paragraph 3 and 4 that after the death of Hopna Majhi, his wife Smt. Budhni Mejhain submitted a claim for employment against the death of her husband in the year 1998 and after verification of claim it was returned back from the Area authority on the ground that the ex-employee has a suitable dependent for employment and Rabi Majhi was advised to submit his claim. It stands proved from such admission in the written statement filed by the management that it was at the instance of the management of ECL Smt. Budhni Mejhain, the wife of deceased had to make way for her son Rabi Majhi and Rabi Majhi submitted his application which was forwarded for being processed. By letter dated 03.07.2001 (Exhibit M-1) Rabi Majhi was informed that his claim for employment could not be processed as the claim was made after a lapse of more than six months. This communication on the part of the management of ECL appears to be

subversive and contrary to its own policy and principle that negates its own decision, which has been admitted in the written statement of the management. Had the management of ECL processed the employment proposal of Smt. Budhni Mejhain, the widow, then there would have been no occasion for Rabi Majhi to submit his application after six months' delay. The conduct of the management in approbating and reprobating its own decision by advising Rabi Majhi to submit claim for employment in place of her mother and thereafter regretting such claim is unethical improper, unreasonable and contrary to fair play. The management thereafter re-opened the case for employment of Rabi Majhi and intimated him by letter dated 08.05.2002, asked him to meet the Personnel Manager of Satgram Area Office along with documents (Exhibit W-6) and he was also placed for Pre-employment Medical Examination by letter dated 09.09.2008 (Exhibit W-7) and further asked to appear for medical examination at the Satgram Area Hospital by letter no. 04.02.2009 (Exhibit W-8). No intimation was given to the claimant regarding the final decision of the management after hold of medical examination. It is gathered from the averment in Paragraph- 6 of the affidavit-in-chief filed by Mr. Kalyan Roy (Management Witness-1) that after IME Rabi Majhi was found fit for underground job and his age was assessed as seventeen to twenty-two years i.e. nineteen years and six months on 22.04.2000. I have no hesitation to accept this fact as true, though no report of medical examination was produced on behalf of the management. The Service Excerpt of Late Hopna Majhi (Exhibit W-5) reveals that Rabi Majhi was twelve years of age on 01.04.1987. Therefore, at the time of his father's death on 01.06.1997 he was twenty-two years of age.

13. Hopna Majhi died at the age of forty-five years, leaving behind his wife and three minor children and his parents. He was the only bread earner of the family. Smt. Budhni Mejhain, the widow who was forty years of age at the relevant time was denied employment only on the ground that there was other eligible member in the family of the deceased employee who could apply for employment. After finding him medically fit for underground employment and of an eligible age, there was no reason for the employer company to deny employment to Rabi Majhi on the pretext that there was delay on his part in submitting his application, especially when such application was made at the instance of and on the advice of the representative of the management.

14. Mr. P. K. Das, learned advocate for the Management relying upon the decision of the Hon'ble Supreme Court of India in the case of **Eastern Coalfields Limited vs Anil Badyakar and Others [(2009) 13 SCC 112]**, argued that the dependent son of the deceased employee in his cross-examination has admitted that he has raised the dispute before the Central Government Industrial Tribunal after twenty years from the date of death of his father. Therefore, his claim for employment on compassionate ground cannot be allowed after lapse of such a long period. In the case of **Eastern Coalfields Ltd. (Supra.)**, the Hon'ble Supreme Court of India observed that:

" *19. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. In our considered view, the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court.* ***"***

15. In the case of **Umesh Kumar Nagpal vs State of Haryana [(1994) 4 SCC 138]**, the Hon'ble Supreme Court of India held that:

" *the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.****"***

16. Mr. Rakesh Kumar, Union representative in reply argued that delay has been caused at the instance of the management of ECL. The claim for employment was raised by the wife of the deceased employee at the earliest point of time but the same was not entertained and processed. On the other hand, her family was advised to raise a fresh claim for employment by the dependent son which was again dis-allowed on a frivolous pretext that the prayer has been made after the lapse of six months from the date of death of the employee. Mr. Kumar argued that the decision cited on behalf of the management is not applicable to the present case as the claim for employment has been raised much earlier and the initial date of raising the claim has to be taken into consideration and not the date of Reference made in this case.

17. Having considered the arguments advanced by the learned advocate for the management and the union representative for the dependent of the deceased employee and after considering the facts and circumstances of this

case along with the settled principles of law, I find that the facts and circumstances of the instant case is distinguishable from the case of **Eastern Coalfields Ltd. (Supra.)**, wherein after the death of the employee of ECL on 31.12.1981, two separate applications for compassionate appointment were filed by the legal heirs of the deceased employee. There were differences between the legal heirs who ultimately reached a settlement and the employment was offered after ten years. The appeal was subsequently cancelled and the matter was challenged before the Hon'ble High Court of Calcutta. In the instant case there has been a delay of several years and till date no employment has been granted to the legal heirs of the deceased employee. This delay however can be attributed to the procrastination of the management in processing the prayer for employment. At first, they declined to process the proposal for employment of the widow of the deceased soon after the death and advised the dependent son to apply for employment. In Paragraph (3) and (4) of the written statement the management of ECL admitted that after the death of Hopna Majhi, his wife Smt. Budhni Mejhain submitted a claim for employment against death of her husband in the year 1998. After verification the claim of employment was returned from Area authority on the ground that Late Hopna Majhi had suitable dependent for employment and Rabi Majhi was advised to submit claim in his name. In course of time, after delay on their part management turned down the prayer for compassionate appointment of the dependent son on the ground of delay, though he was found medically fit and of eligible age. It needs to be borne in the mind that the management cannot act in an arbitrary and whimsical manner by regretting employment on compassionate ground even after the dependent of the deceased workman fulfilled the terms of the Scheme laid down in NCWA. Therefore, the entire delay was caused at the end of the management of ECL by not taking a decision in time to frustrate the claim on the pretext of delay. There is no denial on the part of the management that the family of the deceased employee did not have sufficient means of livelihood. It is true that the family of deceased survived over the years but management of the company cannot be allowed to nullify and deny the benefit of compassionate appointment which accrued in favour of Rabi Majhi under the Scheme of the company laid down by the Joint Bipartite Committee for the Coal Industry.

18. In the case of **Subimal Sarkar vs State of West Bengal (2012 SCC Online Cal 4257),** the Hon'ble High Court of Calcutta observed that :

"** The applicant's claim for compassionate appointment cannot be denied by the authorities by keeping the application pending for an unreasonably long period of time, only in order to frustrate the purpose of the application. It cannot also be said that the necessity for compassionate appointment has been blown over due to passage of time.* **"

19. In my considered view the dependent son of the workman is entitled to be considered for employment according to Clause 9.3.3, 9.3.4 and 9.5.0 (iii) of NCWA-VI. The delay which has crept in is due to the arbitrary, improper and unjust act of the management of ECL in not following the terms of NCWA for the purpose of providing compassionate appointment. This is an appropriate case of granting compassionate employment to a dependent where the workman has expired in harness at the age of forty-five years. The delay has been caused due to inaction and silence on the part of the management in not communicating their decision after having referred Rabi Majhi to the Medical Board for his examination for the second time. Mr. Kalyan Roy (management witness-1) in his cross-examination has admitted that the management of ECL has committed wrong against Rabi Majhi by not providing him with employment.

20. In the light of my above discussion, I hold that Rabi Majhi is entitled to compassionate appointment due to death of his father in harness. The Industrial Dispute is accordingly decided in favour of Rabi Majhi on contest against the management of ECL.

Hence,

ORDERED

an Award be drawn up in favour of Rabi Majhi, the dependent son of Late Hopna Majhi, ex-employee, directing the management of Chapui Khas Colliery under Satgram Area of ECL to consider him for compassionate appointment against the death of his father Hopna Majhi. Management is directed to take appropriate steps and complete the process within two months from the date of Notification of the Award and the final decision be communicated to the dependent son in writing within fifteen days from the date of completion of the procedure. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

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